

2-1-1899

Letter from the Acting Secretary of the Interior transmitting, in response to resolution of the Senate of June 27, 1898, a communication from the Commissioner of Indian Affairs; also copies of two reports, and their inclosures, from United States Indian Inspector McConnell, of his investigation of the enrollment and payment of the Cherokee freedmen under the decree of the Court of Claims in the case of Moses Whitmire, trustee, v. the Cherokee Nation.

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Recommended Citation

S. Doc. No. 101, 55th Cong., 3rd Sess. (1899)

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PAYMENT OF \$400,000 BY THE CHEROKEE NATION ON
ACCOUNT OF THE CHEROKEE FREEDMEN.

LETTER

FROM THE

ACTING SECRETARY OF THE INTERIOR

TRANSMITTING,

IN RESPONSE TO RESOLUTION OF THE SENATE OF JUNE 27, 1898,
A COMMUNICATION FROM THE COMMISSIONER OF INDIAN
AFFAIRS; ALSO COPIES OF TWO REPORTS, AND THEIR INCLO-
SURES, FROM UNITED STATES INDIAN INSPECTOR McCONNELL,
OF HIS INVESTIGATION OF THE ENROLLMENT AND PAYMENT
OF THE CHEROKEE FREEDMEN UNDER THE DECREE OF THE
COURT OF CLAIMS IN THE CASE OF MOSES WHITMIRE, TRUSTEE,
v. THE CHEROKEE NATION.

FEBRUARY 3, 1899.—Referred to the Committee on Indian Affairs and ordered to be
printed.

DEPARTMENT OF THE INTERIOR,
Washington, February 1, 1899.

SIR: I have the honor to acknowledge the receipt of a resolution of
the Senate, dated June 27, 1898, in the following words:

That the Secretary of the Interior transmit to the Senate copies of the corre-
spondence, evidence, and reports relative to the payment of \$400,000 by the Chero-
kee Nation on account of the Cherokee Freedmen, and the disposition of \$126,000
thereof on account of services and claims in connection therewith.

In response thereto I transmit herewith a copy of a communication
of July 9 last from the Commissioner of Indian Affairs; also copies of
two reports, and their inclosures, from United States Indian Inspector
McConnell, of his investigation of the enrollment and payment of the
Cherokee Freedmen under the decree of the Court of Claims in the case
of Moses Whitmire, trustee, v. The Cherokee Nation.

Very respectfully,

THOS. RYAN,
Acting Secretary.

The PRESIDENT OF THE SENATE.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, July 9, 1898.

SIR: I have the honor to acknowledge the receipt of your communication of the 30th ultimo transmitting Senate resolution of June 27, 1898, and also including two reports, with their inclosures, of United States Indian Inspector William J. McConnell, of his investigation of the enrollment and payment of the Cherokee Freedmen under the decree of the Court of Claims in the case of Moses Whitmire, trustee, *v. The Cherokee Nation*, and a letter from Hon. E. R. Tingle, House of Representatives, in regard to the payment of \$400,000 to the Cherokee Freedmen by the Cherokee Nation.

I have the honor to state, in returning the papers aforesaid, that there is no data contained in the files of this office relative to the appropriation of the sum of \$400,000 by the council of the Cherokee Nation for payment to the Cherokee Freedmen under the decree aforesaid, to the disposition of the \$126,000 thereof on account of alleged services and claims, nor to the payment of the remainder to the Freedmen. This is fully evidenced after an exhaustive search of the records and files of this office. Pursuant to your direction, however, copies of the essential papers are inclosed herewith.

Very respectfully,

W. A. JONES,
Commissioner.

The SECRETARY OF THE INTERIOR.

WASHINGTON, D. C., *January 24, 1898.*

SIR: In accordance with your order of the 10th ultimo, I visited Tahlequah, in the Indian Territory, and investigated the appropriation of certain moneys made by the Cherokee council, and the disbursement thereof, and beg leave to report as follows:

An agreement was entered into between the representatives of the freedmen and free colored persons of the Cherokee Nation and the representatives of the Cherokees, by and under which the Court of Claims filed what is known as the amended decree in the case of Moses Whitmire against the Cherokee Nation.

Under this compromise it was agreed that S. H. Mays, principal chief of the Cherokee Nation, would call a session of the council of the aforesaid nation for the purpose of appropriating \$400,000, which was designed to equalize the payments of the Cherokee freedmen and free colored persons with payment which had already been made to the Cherokees. This session of the Cherokee council was accordingly called, and on March 27, 1896, passed an act appropriating approximately the aforesaid sum, directing that the same be paid by the treasurer of the Cherokee Nation to the freedmen of that nation, as their names should appear upon the roll provided by the Secretary of the Interior, after deducting certain unestimated amounts set up in said act. The bill appropriating this sum was drawn by one R. H. Kern and contained a proviso that out of the sum appropriated should be paid such attorneys' fees as Moses Whitmire, trustee of the Cherokee Nation, might incur. Prior to the convening of the council, namely, on June 28, 1896, Moses Whitmire, as trustee of the Cherokee freedmen, entered into an agreement with R. H. Kern and J. Milton Turner, of the city of St. Louis, State of Missouri, in which he promised to pay said R. H. Kern a sum of money equal to one-third of \$400,000 for

his services in having the said sum appropriated by the Cherokee national congress or the Congress of the United States. A copy of this agreement I herewith transmit, marked "Exhibit A²."

I visited Moses Whitmire and took his statement concerning the aforesaid transaction, which I herewith inclose, marked "Exhibit B²."

I also took the statement of Allen Lynch, one of the advisory committee of the freedmen, who, as a member of such committee, consulted with their trustee in all matters pertaining to those people. I also transmit it, marked "Exhibit C²."

It is claimed by Whitmire and his associates, the aforesaid advisory council of the freedmen, that under the circumstances of the agreement entered into as to the fee to be paid Kern out of the \$400,000 to be appropriated by the Cherokee council he (Kern) was to get the equivalent of 4 per cent of the money recovered by Mr. Kern and associate counsel, under the decree of the Court of Claims, in favor of the Cherokee freedmen. He says that the contract read to him, and which he signed with his mark, did not carry with it any proviso for paying Kern or anyone else for their services of getting the appropriation of \$400,000 through the Cherokee council.

I visited Maria L. Richardson, who lives at No. 1416 I street NW., this city, the witness to the agreement between Whitmire, Kern, and Turner, and she says she had no knowledge of the contents of the document to which she signed her name as a witness. She only witnessed as to the identity of Mr. Whitmire.

I learned while in Tahlequah that the treasurer of the Cherokee Nation refused to pay the money on the contract between Kern, Turner, and Whitmire as it was originally witnessed, but compelled Kern to get other witnesses, which he accordingly did, securing the names of A. C. Cunningham and C. L. Harnage, which seemed to satisfy the treasurer of the Cherokee Nation, and he accordingly paid R. H. Kern the sum of \$126,666, as evidenced by copy of receipt which is attached and made a part of Exhibit A².

I learn that the additional witnesses to the signature of Moses Whitmire are now in the employ of one of the principal advocates of the appropriation.

Rumors were rife as to bribery being used in securing the passage of the appropriation bill through the Cherokee council, and while I was not able to secure positive testimony as to the facts in this matter, not having the power to summon and compel the attendance of witnesses, from the best information obtainable under the circumstances there is no question in my mind but that the passage of the bill was secured by a liberal distribution of money. This was so notorious that the national council of the Cherokee Nation at its last session adopted a resolution providing for an investigation of the charges of bribery and corruption which were so freely made in connection with the aforesaid appropriation. A copy of this resolution I herewith inclose, marked "Exhibit D²."

In accordance with the provisions of the foregoing resolution a committee was appointed to investigate, but the time before the adjournment of the council was so short by statutory limitation that they did not have an opportunity to complete their labors, and another resolution was passed asking the chief of the nation to call the council in special session, with a view to investigating these charges, a copy of which I transmit to you, marked "Exhibit E²." In reply to the foregoing resolution, Chief Mays refused to concur in the same, as evidenced by his reply, which I also transmit, marked "Exhibit F²."

I addressed a written request to the treasurer of the Cherokee Nation for a statement showing to whom the money appropriated in what is known as the \$400,000 bill was disbursed. He very kindly gave me the information desired, and I herewith transmit the same, marked "Exhibit G²."

I secured from the secretary of the investigating committee appointed by the Cherokee council, Jesse B. Raymond, copies of the testimony taken during that investigation, and herewith transmit them, together with the other papers in this case. Accompanying these exhibits I transmit the statement of Mr. Raymond, marked "Exhibit H²."

Although the committee appointed by the Cherokee council had authority to summon witnesses and compel the attendance of the same, the character of the evidence they obtained is not such as to be of much value, and the refusal of Chief Mays to authorize the investigation to be continued is not satisfactorily explained.

I took the testimony of a number of witnesses who were familiar with the mode adopted in securing the aforesaid appropriation, and I herewith hand you the same, marked Exhibits I², J², K², L², M², and N².

In brief, the entire transaction of the enrollment of the Cherokee freedmen and free colored persons, together with the appropriation of the money by the Cherokee council for the purpose of equalizing the payments, was a disgraceful affair. Men high in the councils of the Cherokee Nation, as well as others trusted by the Cherokee freedmen and free colored persons, have grossly and outrageously betrayed the confidence of their too confiding people.

Respectfully submitted.

W. J. McCONNELL,
Indian Inspector.

HON. SECRETARY OF THE INTERIOR,
Washington, D. C.

WASHINGTON, D. C., *January 25, 1898.*

SIR: In transmitting my final report as to the result of my investigation of the Cherokee compromise matter, I desire to express my very grateful appreciation of the valuable assistance rendered in that work by Mr. George C. Ross, who accompanied me to the Indian Territory.

Mr. Ross is an indefatigable worker, patient and persevering, and I consider myself fortunate in having his aid.

W. J. McCONNELL,
United States Indian Inspector.

HON. SECRETARY OF THE INTERIOR,
Washington, D. C.

EXHIBIT A.—*Frank J. Boudinot's affidavit.*

UNITED STATES OF AMERICA, *Indian Territory, Northern District:*

Personally appeared before me, a notary public in and for the above-named district and Territory, came this day Frank J. Boudinot, to me well known, who, after being duly sworn as the law requireth, deposeth and saith:

In the fall of 1895, at a special session of the national council, E. C. Boudinot, my brother, was elected by said council and commissioned by the principal chief of the Cherokee Nation as attorney for said nation, whose especial duty was to represent

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the nation's interest before the United States Court of Claims and the United States Supreme Court at Washington, D. C., in the matter of an appeal from a recent decision of the said Court of Claims to the Supreme Court, which the nation desired to be taken in the case of Moses Whitmire, Trustee, etc., v. The Cherokee Nation et al.

Said E. C. Boudinot and I were partners in law, with our office at Tablequah, Ind. T. During the first part of October, 1895, E. C. Boudinot went to Washington to perform his duty as such attorney in the premises. He returned at the beginning of the regular session of the national council, on the first Monday in the November following, no appeal having been yet completed. Shortly after his return my brother told me of a compromise which had been suggested. We talked the matter over in detail in our office, and we finally decided that the compromise, if carried out as then understood by us, was all right and best for all parties concerned. A large sum of money was involved, and he being attorney for the nation, we decided that in any contracts for fees which we might make with the parties interested my name (F. J. Boudinot) should be used, but that we should both participate equally in the money to be paid our firm for effecting such compromise. No contract was yet made and no understanding was yet had as to the amount we should receive, nor who our associates would be.

The proposition was made by Jake Guthrie, representing, as he said, other parties. He was to telegraph my brother, E. C. Boudinot, and there was to be a meeting at Kansas City, Mo. The telegram came and my brother and his wife went to Kansas City in the early part of November, 1895. He returned in a few days and reported that they had decided to make no written contract—to have no agreement in writing—that the nature of the business and the official positions of the parties made it necessary to keep all transactions secret in relation to the business. He gave me the names of the parties to this secret contract, as follows: R. H. Kern, S. H. Mayes, Jake Guthrie, and J. E. Campbell, W. W. Hastings, and C. J. Harris. All the money to be made was to pass through Kern's hands, but that he had been assured that "Kern's word was as good as his bond." So the matter stood when legislation in relation to the matter was passed by the Cherokee national council in November, 1895. All the above-named parties and my brother went to Washington in December following and tried to effect the compromise authorized by act of national council. Records will show they failed and why, and records will also show the conditional agreement accepted by the Court of Claims. My brother returned in February, 1896, and died on the 20th, the day after, having told me how the matter stood at that time.

I, myself, had not had any direct understanding with the other parties to this secret agreement up to that time. The council was called in special session in March following. I communicated my knowledge of and interest in the secret contract aforesaid to the other parties interested, and they declared that since it had failed at Washington the agreement was off, but that if they needed my help in any way they would let me know. A few nights after a messenger came for me to go to R. H. Kern's room in the National Hotel at Tablequah. I went down and found Campbell, Guthrie, and Kern present. Campbell gave me a bill which he said they had prepared and wished to get before the committee and reported by it to the council in the exact words it then contained. Campbell asked me if I could do it. I told him to let me take the bill for a couple of hours and I would report. I took the bill and finally told him, that with some changes, which I showed him and insisted upon, I would guarantee to get it reported by the committee without further changes. He said he would have to consult Kern, so he called Kern, and I explained the matter to him and showed him the changes I had suggested.

He objected, saying he had spent a great deal of time in the preparation of the bill, and it was just as he had wanted it. I told him I did not think it was any use to present it in that shape. He then agreed to the changes that I had suggested. Campbell then asked me what my work would be worth. I told him I would only insist on the original agreement with my brother being carried out. He said all right, and explained that there wouldn't be as much money apiece as there would have been, because they had been compelled to intrust other parties in addition to the original six besides Kern. Next morning Kern and Campbell came to my law office, where we were to draw up the bill as it was to be presented. W. P. Boudinot, my father, was there. We had formed a partnership in the law business after my brother's death.

My father was the clerk of the committee who was supposed to have the preparation of the bill in charge. W. W. Hastings came in and told him he had better go back to the hotel and stay there; that his presence there might arouse suspicion. Kern went away and we fixed up the bill in the exact shape it afterwards passed the national council and was approved. Records will show the proceedings had in relation to and the final disposition of the matter at Washington, D. C.

James S. Stapler was one of the parties interested after my brother's death, and I asked him to receive and bring to me the money I was to get, which should have

been one-half of the amount agreed on at first, or about \$4,000. Stapler did not pay me, but W. W. Hastings did pay me my share of \$4,000, which he said was all each got after expenses at Washington had been met, and further deponent saith not.

FRANK J. BOUDINOT.

Sworn to and subscribed before me, this 18th day of June, 1897. (My commission expires February 1, 1900.)

R. E. BUTLER, *Notary Public*.

EXHIBIT B.—*Mrs. E. C. Boudinot's affidavit.*

UNITED STATES OF AMERICA, *Indian Territory, Northern District:*

Personally appeared before me, a notary public in and for the above-named district and Territory, came this day Mrs. E. C. Boudinot, to me well known, who, after being duly sworn as the law requires, deposes and says:

In the fall of 1895, at a special session of the national council, E. C. Boudinot, my husband, was elected by the said council and commissioned by the principal chief of the Cherokee Nation as attorney for said nation, whose special duty was to represent the nation's interest before the United States Court of Claims and the United States Supreme Court at Washington City, D. C., in the matter of an appeal from a recent decision on the said Court of Claims to the Supreme Court, which the nation desired to be taken in the case of Moses Whitmire, trustee, *v. Cherokee Nation et al.*

During the first part of October, 1895, I went with my husband, Mr. Boudinot, to Washington City, where he went to perform his duty as such attorney in the premises. While there a proposition was made to him by R. H. Kern, attorney for Whitmire in the Freedmen case, that a commission might be established that would reduce the Wallace roll, and a new roll made based upon the roll of 1880. This Mr. Boudinot considered was a fortunate offer for the Cherokee Nation, as the Wallace roll was known to have more than 1,000 fraudulent names thereon. It was also understood that as this would hasten the decision of the case, that R. H. Kern was to share the fees, supposing to amount to \$126,000, with my husband, E. C. Boudinot, S. H. Mayes, W. W. Hastings, C. J. Harris, Jake Guthrie, and J. E. Campbell. At that time the compromise was not carried out, but after we returned home Mr. Boudinot and myself, in response to a telegram calling him to Kansas City, Mo., went there in the early part of November, 1895. There an understanding was reached between the parties named above. No written contract was made, but Kern was to pay the money to each party as soon as he received the fees of the above-named parties.

My husband and myself went to Washington City in December following, as well as James B. Stapler, and a trial was made to effect a compromise authorized by the act of the national council. I do not know the exact nature of that compromise; at any rate, all parties seemed perfectly satisfied. When we returned to Tahlequah in February—my husband died the 20th day of February, 1896. A few weeks after this Mr. Campbell came to my house and told me that the amount I was expecting from the fees to my husband would not be quite so large as we had heretofore expected, owing to the fact that they had associated other parties with them. I expected that Mr. Campbell would do what was right by me. Later on Mr. Stapler spoke to me about the matter and asked me if I was to share my interest with Frank Boudinot. I gave Frank Boudinot an order to Mr. Stapler, ordering him to pay Frank Boudinot one-third of the amount. Finally Mr. W. W. Hastings paid me \$2,400 and paid Frank Boudinot \$1,600, stating that that was all that was due us from the entire fee.

I did not, however, expect to get less than \$8,000 to my part, even after I had talked to Mr. Campbell. And further deponent saith not.

Mrs. E. C. BOUDINOT.

Sworn to and subscribed to before me on this the 19th day of July, 1897. (My commission expires February 1, 1900.)

R. E. BUTLER, *Notary Public*.

EXHIBIT C.

In the fall of 1895, at a special session of the national council of the Cherokee Nation, E. C. Boudinot, of the town of Tahlequah, Ind. T., was elected by the national council to represent the Cherokee Nation as its attorney before the Court of Claims and the Supreme Court of the United States at Washington, D. C., and was instructed

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to take an appeal from a decision by the Court of Claims to the Supreme Court wherein Whitmire, trustee, was plaintiff for the freedmen of the Cherokee Nation et al., and during some time, or about the 1st of October, 1896, the said E. C. Boudinot went to Washington City, as authorized by the council, and when he returned, early in November of the same year, at which time the national council was in regular session, to which he made his report of his mission to Washington as previously authorized by law, and in suggesting a compromise in the suit then pending, that the Cherokee Nation confesses judgment and appropriates an additional sum of \$400,000, to equalize the payment to the said freedmen, as shown by the said decree of said court; and one of the principal advantages to the Cherokee Nation, "as represented by the said E. C. Boudinot," by the acceptance of the proposition to compromise, was that the Cherokee Nation would get the right of making a new roll of the Cherokee freedmen, and that the basis of the making of said roll would be the roll of the freedmen made by the Cherokee Nation in the year 1880, as the recognized citizens on the nation thereof, in lieu of a certain roll made by and known as the Wallace roll, as authorized by the Department at Washington, D. C., and that the said roll thus made by the said Wallace contained several hundred more names of the colored people than was entitled or some more than a 1,000 then was recognized by the nation's authenticated roll of 1880.

And during the said council of 1895, C. J. Harris, Joseph Smallwood, Roach Young, and myself were elected as delegates to represent the nation (otherwise) at the city of Washington, D. C., during the session of Congress for 1895 and 1896; and reaching Washington some time in December, 1895, and some time during that session of Congress, Roach Young, Joseph Smallwood, and myself was requested to meet R. H. Kern of St. Louis, Mo., then the employed attorney of the said freedmen, and E. C. Boudinot, in a room then occupied by Chief S. H. Mayes, who had accompanied the delegation in connection with C. J. Harris; met said Kern, Boudinot, and Chief Mayes in the latter's rooms. I will not be certain whether W. W. Hastings was in the room, but think so. It was then that one of the parties, I disremember which, Kern or Boudinot, presented a written contract, affecting the said compromise, and all parties witnessed the same as well as myself. As entered into by and between E. C. Boudinot on part of the Cherokee Nation and R. H. Kern on part of the said freedmen, and there was an additional contract by and between S. H. Mayes as chief of the nation and R. H. Kern on part of the freedmen aforesaid, whereby the said Chief Mayes agreed to call an extra session of the national council for the purpose of submitting by special message, by which he would advocate the consummation and appropriation of the \$400,000 in harmony of the compromise as agreed on by Kern and Boudinot and the said agreement as made by said Mayes, the delegation was asked to sanction; and after considerable thought over the matter and considering the great advantage to the Cherokee Nation that by defeating the said Wallace roll or by eliminating all such names that should not appear on said roll and the substitution therefor a genuine and correct roll of said freedmen who were entitled, we did.

And at a subsequent special session of the national council, called as agreed to by Chief Mayes, the compromise was accepted and approved by the council and the appropriation of the \$400,000 made, but subsequent events go to show that the object of the compromise agreement was not carried out, to the detriment of the Cherokee people; in this, that instead of getting rid of the fraudulent names on the Wallace roll the number was enhanced several hundred and a great many names known to be entitled and on the 1880 roll to whom the nation had no contention were omitted.

And further deponent saith not.

GEORGE BENGE.

STATE OF MISSOURI, *City of St. Louis:*

The foregoing was subscribed and sworn to before me on the 28th day of October, 1897. (My term of office expires July 31, 1899.)

S. A. H. MOSES,
City of St. Louis.

STATE OF MISSOURI, *City of St. Louis:*

Be it remembered that on this 29th day of October, 1897, before me, S. A. H. Moses, a notary public in and for the city and State aforesaid, personally appeared R. C. Adams, of lawful age, to me personally known, who, being by me duly sworn, upon his oath states that the three annexed copies of affidavits signed by F. J. Boudinot, Mrs. E. C. Boudinot, and George Bengé, and subscribed and sworn to by F. J. Boudinot on the 18th day of June, 1897, before R. E. Butler, a notary public in and for the Indian Territory, and by Mrs. E. C. Boudinot on the 19th day of July, 1897, before the said R. E. Butler, and by George Bengé before S. A. H. Moses, a notary public in and for the city of St. Louis, Mo., on October 28, 1897, are respect-

fully true copies of the originals bearing the signatures of the affiants and the signatures and seals of the aforementioned notaries.

Said three copies of the original papers are marked respectively exhibits "A," "B," "C;" and further affiant saith not.

R. C. ADAMS, of Fort Gibson, Ind. T.

Subscribed and sworn to before me this 29th day of October, 1897. (My commission expires the 31st day of July, 1899.)

S. A. H. MOSES,
Notary Public in and for the City of St. Louis, Mo.

And I further certify that the said original papers from which the above-mentioned copies were made were exhibited to me by the said R. C. Adams, of Fort Gibson, Ind. T., the above affiant, and that, so far as I am able to determine, they are original and bona fide papers; and I further certify that the annexed exhibits "A," "B," and "C" are true copies of the same. (My commission expires the 31st day of July, 1899.)

S. A. H. MOSES,
Notary Public in and for the City of St. Louis, Mo.

TAHLEQUAH, IND. T., December 27, 1897.

Louis T. Brown, being duly sworn, on his oath says: My post-office address is Vinita, Ind. T.; my age is 23 years; my occupation is principal of the Colored High School at Tahlequah, Ind. T. In the summer of 1896 I was employed by J. Milton Turner, of St. Louis, Mo., to assist him in getting claimants for the Cherokee Freedmen fund placed on the Clifton roll. It was the practice of the said Turner to accompany the Clifton commission in all parts of the Cherokee Nation where their headquarters were established. Mr. Turner and the commission were at Hayden, Fort Gibson, Tahlequah, and Hayden again; Salisaw, and Fort Gibson again; Vinita, Chelsea, and Vinita again; all in succession and in the order named. Mr. Turner would always locate his office either in a room adjoining the commission or in a tent adjacent to or facing the office occupied by said commission. It was a part of my duty to talk with the applicants who were claimants for per capita freedmen payments, take their statements, and make up their cases for presentation to the commission. Said Turner would appear before the commission on cases made up by me and represent them. With me and associated in like work were George F. Nave, of Chouteau, Ind. T., L. A. Bell, of Wagoner, L. W. Cooper, of Muscogee, Ind. T., Miss Ellen Buckner, of Hayden, Ind. T., and Miss Emma Hudson, of Fort Gibson, Ind. T. Under instructions from said Turner I made contracts with all freedmen applicants for services to be rendered in getting their names on the Clifton rolls. For this service Mr. Turner charged \$10 each. The Freedmen payments were made at Hayden and Fort Gibson; these were known as the Dixon payments; another payment was made soon thereafter at Tahlequah, Ind. T., Chelsea, and Fort Gibson; these were made by D. W. Lipe, Cherokee treasurer. I was present at all these payments, as was Mr. Turner. My duty was to collect fees from freedmen due Mr. Turner for getting their names placed on the Clifton rolls. This I did at the Dixon payments above named and also at the Lipe payments. At the Lipe payment it was the custom of the clerks and officers working under said Lipe to refuse to let freedmen have their per capita until they promised to pay me Mr. Turner's fee of \$10. I kept all the records, contracts, and accounts for Mr. Turner, and there was collected for Mr. Turner at the Dixon payments about \$4,000; at the Lipe payments I collected for said Turner about \$7,500.

While Mr. Kern, of the commission, was acting for the Government in making up the freedmen roll he frequently asked me to run over the fee accounts made out to Mr. Turner. We discussed those probably good and those bad and what the total amounts of contracts footed up. Mr. J. Milton Turner informed me on more than one occasion that one-half of the proceeds of the fee contracts taken in his name belonged to R. H. Kern, and to let the latter have access to the contracts and accounts at any time he desired, which I did. During the Dixon payment at Fort Gibson, Ind. T., Mr. R. H. Kern wrote to Mr. J. Milton Turner, either from St. Louis or Chicago, stating that it was necessary for him, Turner, to send to Kern \$500 as his part to complete the Morgan street building in St. Louis, and requesting him to send what other money he had due Mr. Kern. Thereupon Mr. Turner directed me to ascertain the full amount of moneys collected as fees from the freedmen, and find out the expense incident to its collection, which I accordingly did, finding the net sum due both, which I divided by 2; this made \$945 each to Kern and to Turner. Thereupon I wrote two checks, the sum of which amounted to \$945, and sent them by mail to

R. H. Kern to St. Louis, Mo. These checks were drawn on the National Bank of Commerce, St. Louis, Mo., and were signed by J. Milton Turner.

From the above considerations I am sure that R. H. Kern, while acting for and in behalf of the Government in enrolling freedmen for the purpose of getting their per capita share of the Cherokee fund, was also in partnership with J. Milton Turner, who was negotiating for and receiving fees for getting the same freedmen placed upon the United States roll, called the Clifton rolls.

LOUIS T. BROWN.

Sworn to and subscribed before me this December 27, 1897.

W. J. McCONNELL,
United States Indian Inspector.

EXHIBIT A².—*Agreement of Moses Whitmire with R. H. Kern and J. Milton Turner.*

WASHINGTON, D. C., January 28, 1896.

This agreement, made and entered into the day and year above written, between Moses Whitmire, trustee of the freedmen of the Cherokee Nation, and Robert H. Kern and J. Milton Turner, of the city of St. Louis, State of Missouri, witnesseth, to wit:

The said Moses Whitmire, acting as said trustee for said freedmen, hereby contracts and agrees to give said Robert H. Kern a sum of money equal to one-third of \$400,000 for his services in having the said sum appropriated by the Cherokee national council or the Congress of the United States to equalize said freedmen with the Cherokee Indians in the three several payments of money to themselves mentioned in the suit of Whitmire, trustee, etc., v. The Cherokee Nation et al., now pending in the United States Court of Claims at Washington, D. C., and the said Kern hereby accepts the said contract of employment and agrees to have said money appropriated as herein provided, and that if the same be not appropriated, then no charge shall be made under this agreement. It is expressly understood that the sum of money herein contracted to be paid said Robert H. Kern shall be paid by the officer of the law authorized to disburse said \$400,000, out of the said sum of \$400,000, under the act appropriating the same.

In witness whereof we have hereunto set our hands and seals the day and year above written.

ROBERT H. KERN.
J. MILTON TURNER.
MOSES (his x mark) WHITMIRE.

Witness to signature of Moses Whitmire, trustee, etc.:

MARIA L. RICHARDSON, 1416 I street NW.

Personally appeared before the undersigned, a notary public, the aforesaid Moses Whitmire, who being duly sworn makes oath and says that he executed the aforesaid instrument, as trustee of the freedmen of the Cherokee Nation, on the 28th day of January, 1896, for purpose herein mentioned.

MOSES (his x mark) WHITMIRE,
Trustee for Cherokee Freedmen.

Witness to signature of Moses Whitmire:

A. C. CUNNINGHAM.
C. L. HARNAGE.

Subscribed and sworn to before me this 13th day of August, 1896. (My commission expires November 25, 1896.)

E. B. BENDER, Notary Public.

TREASURY DEPARTMENT, CHEROKEE NATION,
Tahlequah, Ind. T., August 15, 1896.

Received of D. W. Lipe, treasurer of the Cherokee Nation, as provided by an act of the national council approved March 27, 1896, and entitled "An act to appropriate and pay certain moneys arising from the sale of the Cherokee Outlet to the freedmen of the Cherokee Nation," the sum of one hundred and twenty-six thousand six hundred and sixty-six dollars, in full of all demands against the Cherokee Nation, as per act above referred to and contract hereto attached.

ROBERT H. KERN,
Attorney of record in case *Moses Whitmire, Trustee of Cherokee Freedmen, v. Cherokee Nation et al., in Court of Claims of United States.*
J. MILTON TURNER,
per ROBERT H. KERN.

I hereby certify that the foregoing two pages of typewritten matter is a true copy of the contract made between Moses Whitmire, trustee, etc., for the Cherokee freedmen and Robert H. Kern and J. Milton Turner, attorneys for the Cherokee freedmen, before the Court of Claims at Washington, D. C., and also receipt for \$126,666.

D. W. LIPE,
Treasurer Cherokee Nation,
per ROBT. B. ROSS,
Secretary.

TAHLEQUAH, IND. T., December 30, 1897.

EXHIBIT B³.—*Statement of Moses Whitmire.*

VINITA, IND. T., January 3, 1898.

Moses Whitmire, being duly sworn, says: I am nearly or quite 70 years old; I was trustee for the Cherokee freedmen when the Court of Claims rendered what is known as the amended final decree in case No. 17209; was filed on February 3, 1896. In that case I appeared as one of the parties to the suit. I employed Robert H. Kern, an attorney who resides in St. Louis, to take charge of the suit before the Court of Claims. I agreed on behalf of the freedmen that he, Kern, should receive as attorney's fees 10 per cent of the money awarded to the freedmen by the decree of the court, but in rendering the decree the court only allowed Turner 6 per cent, or a total of \$54,201.30, so I entered an agreement to pay him the balance of the 10 per cent, or 4 per cent more, being \$36,134; but after the Cherokee council had made the appropriation of \$400,000, as agreed in the compromise upon which the amended decree was based, I was informed that I had signed an agreement to pay Mr. Kern one-third of \$400,000, or \$126,666, which was one-third of the money appropriated. I could not read or write, and could not know personally what was in the contract I signed. I merely affixed my mark after it was read to me, supposing I was providing for the payment of the balance of the fee due Attorney Kern, the 4 per cent over and above the sum allowed him by the Court of Claims. I did not understand that I was to pay anything on behalf of the freedmen for the services of Mr. Kern in getting the sum of \$400,000 appropriated, or any other sum appropriated by the Cherokee council.

MOSES WHITMIRE (his x mark).

Witnesses:

S. F. PARKS, Tahlequah.
D. W. C. DUNCAN, Vinita.

Subscribed and sworn to before me this 3d day of January, 1898.

W. J. McCONNELL,
United States Indian Inspector.

EXHIBIT C².—*Statement of Allen Lynch.*

VERRITE, IND. T., January 5, 1898.

Allen Lynch, being duly sworn, says: I am 58 years old; I was a slave until liberated by operation of the law; I was the slave of Joe Lynch, a Cherokee Indian; I was born and have lived all my life in the Cherokee Nation. My present residence and post-office address is Verrite; I have known Moses Whitmire, trustee for the freedmen, all my life; I was appointed by the freedmen as one of an advisory committee to consult with and advise him, the said Whitmire, in the performance of his duty as trustee. Soon after Whitmire returned from Washington, some time early in February, 1896, I called to see him at the residence of Miss Vine Scales, where he was stopping, and asked him about what was done by him in the interests of the freedmen while in Washington. I told him I was going home out to my farm and wanted to be able to tell my neighbors, who are freedmen, what to expect. He explained to me the compromise agreement which led to the amended decree which was filed by the Court of Claims February 3, 1896. He stated that the Court of Claims had only allowed Robert H. Kern, attorney for the freedmen, equivalent of 6 per cent of the moneys received for the freedmen, as he, Whitmire, as trustee for the freedmen, had agreed to allow Kern 10 per cent. He had entered into an article with Kern and J. Milton Turner to pay Turner the remaining 4 per cent out of money to be appropriated by the Cherokee council, as agreed in the compromise providing for the appropriation of the \$400,000.

I have often conversed with Moses Whitmire about the contract which he is said to have signed agreeing to pay Kern one-third of \$400,000 for his services in having the said sum of \$400,000 appropriated by the Cherokee council, and he has always said he never knew his signature was attached to any such agreement and that it never was with his knowledge.

I know that Moses Whitmire, trustee for the freedmen, can not read or write, and might have been, and in my opinion was, induced to affix his signature to a fraudulent document.

ALLEN LYNCH (his x mark).

Subscribed and sworn before me this 5th day of January, 1898.

W. J. McCONNELL,
United States Indian Inspector.

EXHIBIT D.

St. Louis, Mo., June 11, 1897.

At a conference held at the office of R. H. Kern between E. F. Cunningham, representing J. Milton Turner, and R. H. Kern, for the purpose of enumerating the number of claims yet uncollected under contracts made between J. Milton Turner and the freedmen of the Cherokee Nation, they find they have in their possession contracts for 1,865 people. Of this number 874 are found to be in the possession of Mr. Cunningham for Mr. Turner, and 991 in the possession of Mr. Kern. It is stipulated and agreed between Cunningham and Kern that 63 of these contracts held by Kern shall be delivered to Mr. Cunningham for Mr. Turner, thus equalizing the number of contracts, leaving each one with 938. These contracts are assumed to be no duplicates, but that can only be determined when payment of the money is made on these contracts. As far as they can see, they are not duplicates. To the best information at hand this is a correct statement, subject, of course, to the future review by developments that may hereafter be made. Mr. Cunningham hereby acknowledges the receipt of 63 individual contracts referred to above, so that each party now holds an equal amount of the same.

Witness our hands this 11th day of June, 1897.

R. H. KERN.
E. F. CUNNINGHAM,
Attorney for J. Milton Turner.

St. Louis, 5-20-1897.

Received of J. M. Turner all contracts due me under contract with him of date January 28, 1897.

R. H. KERN.

At a further accounting held between Cunningham (representing Turner) and Kern, and resifting of accounts and orders, it is found there are 1,494, of which Mr. Cunningham takes one-half and Mr. Kern the other half.

Witness our hands and seals this the 16th day of June, 1897.

R. H. KERN. [SEAL.]
E. F. CUNNINGHAM, [SEAL.]
Attorney for J. Milton Turner.

[NOTARIAL SEAL.]

St. Louis, Mo., July 8, 1897.

Received of J. Milton Turner and R. H. Kern contracts of J. Milton Turner with freedmen of Cherokee Nation to represent them before commission in case of M. Whitmire, trustee, etc., v. Cherokee Nation et al., in amount about \$15,000, under contract of above date between J. M. Turner, R. H. Kern, and myself.

J. E. CAMPBELL.

This agreement made and entered into between J. Milton Turner and J. E. Campbell and R. H. Kern, witnesseth:

That whereas J. Milton Turner holds contracts in his own name made between him and the freedmen of the Cherokee Nation for services rendered them before the commission appointed in the case of Moses Whitmire, Trustee of the Freedmen of

the Cherokee Nation v. The Cherokee Nation et al., in amount about \$15,000; and whereas said J. Milton Turner is desirous that said J. E. Campbell should undertake the collection of all moneys due under said contracts, and the said Turner, for the purpose of enabling the said Campbell to make such collections, hereby assigns all right, title, and interest in said contracts in blank, name therein to be inserted by said Campbell; and that the said Campbell hereby agrees that he will pay to the said Turner a sum not to exceed \$2,500 out of the amounts collected by him; and further the said Campbell agrees to pay out of the moneys so collected by him to Robert H. Kern a sum not to exceed \$2,000, and in no event to pay to the said Turner and Kern less than 30 per cent of the amounts collected by him; and in the proportion above stated; and the said Campbell hereby further agrees to truly account to the said Turner and Kern, or their representatives, for all moneys collected by him for them under the terms of this agreement, and to return to the said Turner and Kern all contracts hereby assigned, the amounts of which have not been collected, and does by this agreement become bounden to the said Turner and Kern in a sum not to exceed \$4,500 for the faithful performance of this agreement, and said Robert H. Kern hereby guarantees in a like sum in proportion to the interest of the parties to this agreement for the faithful performance of the duties of said J. E. Campbell under this agreement.

Witness our hands hereto attached this 8th day of July, 1897.

J. MILTON TURNER.
J. E. CAMPBELL.
R. H. KERN.

STATE OF MISSOURI, *City of St. Louis, ss:*

I hereby certify that the above are true copies, to the best of my knowledge and belief, of receipts and contracts purporting to be originals, and of the dates as respectfully set forth in papers sworn by R. C. Adams before me to be the originals of said contracts and receipts, as delivered to him by E. F. Cunningham this 1st day of December, A. D. 1897.

In testimony whereof I hereunto and to two duplicates hereof set my hand and affix my notarial seal at my office in the city of St. Louis, the day and year in this certificate written. (My commission as notary public expires the 31st day of July, A. D. 1899.)

[NOTARIAL SEAL.]

S. A. H. MOSES,
Notary Public, City of St. Louis, Mo.

STATE OF MISSOURI, *City of St. Louis, ss:*

E. F. Cunningham, of lawful age, on his oath, says that the papers of which the foregoing is a copy are the original receipts and contracts that came into his possession as the result of the controversy between J. Milton Turner and R. H. Kern, in the matter of adjusting their accounts or settlements in the freedmen case.

E. F. CUNNINGHAM.

Subscribed and sworn to before me this 2d day of December, 1897. (My term ends July 31, 1899.)

[NOTARIAL SEAL.]

S. A. H. MOSES,
Notary Public.

EXHIBIT D³.—*Resolution of Cherokee council.*

Whereas it is currently reported and generally believed that the so-called compromise between the attorneys of the Cherokee freedmen and the executive department of the Cherokee Nation and the subsequent approval of the same by the national council was the result of a conspiracy between the attorneys of said freedmen and the representatives of the Cherokee Nation to rob the treasury of \$400,000, and to fix upon the Cherokee people a population of more than one thousand useless and degraded negroes to share their lands;

And whereas it is proclaimed throughout the length and breadth of the land that the officials of the nation shared in the spoils wrung from the people by fraud and open corruption, and that the charges unchallenged are used against us by our enemies for the destruction of our government and the utter ruin of our people;

And whereas \$126,000 of the \$400,000 withdrawn from the Cherokee Nation was for other purposes than the payment of the freedmen as contemplated by the act of the national council ratifying said agreement;

And whereas the good name of the national council is thereby brought to shame and the officials of the Cherokee Nation are branded as corruptionists and bribe takers and unfit to manage the trust in their hands: Therefore,

Be it resolved by the national council, That there be, and is hereby, created a joint committee of three members from the senate and four members from the council to investigate the charges set forth in the preamble of this resolution and to report their findings to the national council during the present session of the national council; and to the end that a full and complete investigation may be had they are authorized to send for persons and papers, and to administer oaths, and to punish for contempt, and such other acts as may be necessary to the full performance of the duties herein imposed.

EXHIBIT E.

In the matter of investigation of the \$400,000 appropriated for the benefit of the Cherokee freedmen now under investigation by a joint committee of the national council, I know nothing of my own personal knowledge, but on the evening of December 2, 1897, in the town of Tahlequah, Ind. T., while in company with Hon. George W. Benyer, this matter was talked about, and as near as I remember Mr. Benyer stated to me that he (Benyer) had been accused of receiving a part of this money. Benyer further stated that he was summoned up to St. Louis, Mo.; that the records did not show that he (Benyer) had received any money, but that the papers showed that S. H. Mayes, W. W. Hastings, C. J. Harris, E. C. Boudinot, Jake Guthrie, Ed. Campbell had each received the sum of \$13,000. The above statement is just as was made to me by Mr. Benyer, as well as I can remember.

Signed this 3d day of December, 1897.

CHARLES O. FRYEE.

JESSE RAYMOND, *Chairman.*

UNITED STATES OF AMERICA,
Indian Territory, Northern District.

Personally before me, a notary public in and for the above-named district and Territory, came this day Cornelia Hill, to me well known, who, after being duly sworn as the law requires, deposes and says:

At the Cherokee freedmen payment at Fort Gibson, Ind. T., in June, 1897, I paid to J. Milton Turner the sum of \$47.40 out of the proceeds of my strip payment, the same being contracted to him the summer of 1896 for his influence in getting me enrolled upon the Clifton roll.

The deponent further saith that he believes if he had not paid or contracted to pay J. Milton Turner the above-named sum he could not have under any circumstances participated in said payment or have been placed upon said Clifton roll. The deponent further saith that his family numbers one; that he has improvements upon the Cherokee domains in Sequoyah district, Cherokee Nation; that the deponent knows of a great many other freedmen who have paid money to be placed upon the said Clifton roll, some who have not been upon any previous roll of the Cherokee Nation.

NEALIE HILL.

Attest:

H. H. BROOKS.

Sworn to and subscribed to before me this 16th day of August, 1897.

JOHN BRADY.

UNITED STATES OF AMERICA,
Indian Territory, Northern District.

Personally appeared before me, a notary public in and for the above named district and Territory, this day, Sarah Martin, to me well known, who, after being duly sworn as the law requires, deposes and says:

At the Cherokee freedmen payment at Fort Gibson, Ind. T., in June, 1897, I paid to J. Milton Turner the sum of \$5 out of the proceeds of my strip payment, the same being contracted to him the summer of 1896 for his influence in getting me enrolled on the Clifton roll. The deponent further saith that she believes if she had not paid or contracted to pay J. Milton Turner the above-named sum she could not have

under any circumstances participated in said payment or have been placed upon said Clifton roll; the deponent further saith that her family numbers three; that she has improvements upon the Cherokee domain in Sequoyah district, Cherokee Nation; that deponent knows of a great many other freedmen who have money to be placed upon said Clifton roll, some who have not been upon any previous roll of the Cherokee Nation.

SARAH (her x mark) MARTIN.

Attest:

H. H. BROOKS.

Subscribed and sworn to before me this 16th day of August, 1897. (My commission expires March 30, 1901.)

JOHN BRADY, *Notary Public*.

UNITED STATES OF AMERICA,
Indian Territory, Northern District:

Personally appeared before me, a notary public in and for the above-named district and Territory, this day, Sam Shepherd, to me well known, who, after being duly sworn as the law requires, deposes and says:

At the Cherokee freedmen payment at Fort Gibson, Ind. T., in June, 1897, I paid to J. Milton Turner the sum of \$10 out of the proceeds of my strip payment, the sum being contracted to him the summer of 1896 for his influence in getting me enrolled upon the Clifton roll; the deponent further saith that he believes if he had not paid or contracted to pay J. Milton Turner the above-named sum he could not, under any circumstances, have participated in said payment or have been placed upon said Clifton roll; the deponent further saith that his family numbers eight; that he has improvements upon the Cherokee domains in Cooweescoowee district, Cherokee Nation; that the deponent knows of a great many other freedmen who have paid money to be placed upon said Clifton roll, some who have not been upon any previous roll of the Cherokee Nation.

SAM SHEPHERD.

Attest:

H. H. BROOKS.

Subscribed and sworn to before me this 16th day of August, 1897.

[SEAL.]

JOHN BRADY, *Notary Public*.

EXHIBIT E2.—*Joint resolution No. 12.*

Whereas there is now pending before the national council of the Cherokee Nation an investigation of the freedmen compromise, or the \$126,000 matter; and

Whereas further evidence is now in possession of the lower house and ready for introduction; and

Whereas it is deemed wise and necessary for the council and people of the Cherokee Nation to know the truth and the whole of the investigation: Therefore,

Be it resolved by the national council of the Cherokee Nation, That the principal chief be, and is hereby, asked to call council in special or extraordinary session in order that the aforesaid investigation may be satisfactorily carried out to a clear and perfect understanding.

Passed the council December 4, 1897.

JOHN R. MCINTOSH, *Speaker of Council*.

WILL W. ROSS, JR., *Clerk of Council*.

Concurred in by Senate December 4, 1897.

WOLF COON, *President of the Senate*.

JOHN C. DUNCAN, *Assistant Clerk of Senate*.

I hereby certify that the above is a true copy of the joint resolution passed by the regular session of the Cherokee national council asking the principal chief for an extra session.

[SEAL.]

C. J. HARRIS, *Executive Secretary*.

TAHLEQUAH, IND. T., December 28, 1897.

EXHIBIT F.

NOVEMBER 29, 1897.

Some time in fall of 1895, about the time of end of special session of council, when my brother was sent to Washington in the interest of Cherokee Nation v. Cherokee Freedmen, he and I talked of the matter and he expressed his opinion as he always did—that the Cherokee Nation was correct, and that properly managed the case could be won yet. That was after the decision of the Court of Claims. When he returned from Washington City he said that he had no occasion to change his mind about the ultimate outcome if the case should be managed rightly. There was some little misunderstanding about the retainers to be paid attorneys (Shallenbarger and Wilson) for an elaborate opinion, and I never saw the said opinion in writing, if there was one; but my brother said one of them (Shallenbarger, I think), and the best lawyer of the two, agreed thoroughly with him that the negroes did not have the right side of the controversy, and he felt sure that they (the Cherokee Nation) could win before the Supreme Court. Some time about then, I do not remember the exact date nor near it, only it was before regular session of council, 1895, Jake Guthrie or Ed Campbell telegraphed my brother to go to Kansas City the next day and meet them at the Midland. I saw the telegram but do not now know which it was from—Campbell or Guthrie. When my brother showed me the message he said there was a scheme on foot to compromise the matter of the freedmen Shawnees and Delawares' claims, and it was to go meet the representatives of them, respectively, that he was going; that while he did not propose to do anything that would injure the Cherokee Nation, and while the then chief, C. J. Harris, was a party, it was a secret matter and would not do for any of the officers' names to be known. So we agreed that should any contracts be made my name was to be used and we would share in any money that might be made in the transaction.

When he came back he said no contract had been made in writing, but a verbal one with R. H. Kern, who represented the negroes. He always expressed himself as of the opinion that it was not the right thing to do—to compromise—but that he had done all that he could by his first visit to Washington, and now if they wished they might make a compromise by law; that there was going to be a large amount of money made by them in "the ring," and if we had a chance to get some of it we might as well do it. There was five others to divide \$50,000, namely, Jake Guthrie, J. E. Campbell, W. W. Hastings, C. J. Harris, S. H. Mayes, with R. H. Kern of the other part. The compromise bill passed in 1895 and its outcome is well known. When my brother came home in January, 1896, the full decree of the Court of Claims had not been promulgated yet. He died on the 20th of February, a few days afterwards. Kern wrote him a short note just before he died, saying he (Kern) thought council should be called right away to ratify the compromise. I answered the note after my brother's death.

Up to the time of the special session of council of March 16, 1896, I had never spoken a word to any of the parties to the secret contract referred to. When the council met I went to Campbell and told him I expected parties to keep faith. He had written me, in reply to a note of mine, that he would see that my brother's widow was treated right. I told him if there was anything I could help in to let me know. He said he would see the other parties and let me know later. In a few days a boy came after me. I came down and saw Campbell and Kern at the National Hotel. Guthrie was there, too, but I did not have any talk with him. Next morning Kern and I went to my office to fix up a bill ratifying the compromise. Hastings came in and told Kern to go back to the hotel and stay there; he ought not to be seen around. I think Hastings was helping the committee that had the matter in charge.

The bill passed; that's about all I know, except that it looked for a while as if I would not get anything. So I made a written agreement with my brother's widow, and gave it to one of the parties who went to St. Louis to divide the \$126,000. When they came back Campbell wrote me that Hastings would pay me \$1,600, which he did with four checks on Bank of Tahlequah.

(Suspended work on this statement till December 1, 1897.)

Referring to the secret contract mentioned before in this statement, my understanding was that Jake Guthrie, J. E. Campbell, W. W. Hastings, C. J. Harris, and S. H. Mayes were to be the parties to it on the one side and R. H. Kern of the other. This secret contract (my understanding there was no written one) was to the effect that the above-named gentlemen entered into agreement with R. H. Kern, who had a contract with Mose Whitmire to receive one-third of the \$400,000 appropriation; that in case the appropriation passed they, Jake Guthrie, J. E. Campbell, W. W. Hastings, C. J. Harris, and S. H. Mayes, were to receive \$50,000, or one-sixth each. I got \$1,600, or, in other words, I was to get 40 per cent of one-sixth share, whatever that might be.

The party referred to in my above statement, where I said I made a written agreement with my brother's widow and gave it to one of the parties who went to St. Louis to divide the \$126,000, was James Stopler. I do not think Mr. Stopler had any connection with the business during the fall of 1895.

F. J. BOUDINOT.

Sworn to and subscribed to before me this December 1, 1897.

JESSE RAYMOND, *Chairman.*

EXHIBIT F³.

Reply of Chief Mayes to the joint resolution.

DECEMBER 4, 1897.

I am in receipt of your joint resolution adjourning sine die the present session of the national council at 10 o'clock p.m. this day, and respectfully recommend that you give the delegation their necessary instructions and adjourn in accordance with said resolution.

I have nothing further to submit to your honorable body other than I wish to state that I am informed that the investigation of certain official's acts commenced a few days ago has been completed. In regard to this matter I recommend the continuance of this investigation by some judicial authority, that the accused may have opportunity to face witnesses and cross-examine them as he should be allowed in an investigation of this kind.

I favor investigation, but think it should be made by a tribunal in the recess of council, which would be less expensive to the nation and give a better opportunity for a thorough investigation.

S. H. MAYES,
Principal Chief, Cherokee Nation.

EXECUTIVE DEPARTMENT, CHEROKEE NATION,
Tahlequah, Ind. T., December 23, 1897.

I hereby certify that the above is a true copy of the message of Chief S. H. Mayes, of the Cherokee Nation, in reply to a joint resolution adopted by the national council on the 4th day of December, 1897.

C. J. HARRIS, *Executive Secretary.*

EXHIBIT G.

Before the joint committee of investigation.

Mr. D. W. Lipe, who being duly sworn, upon his oath states in relation to the reports and allegations contained in a resolution which passed both branches of the national council wherein a collusion is said to have existed between officers of our nation and attorneys on behalf of the freedmen.

I know nothing whatever about any compromise or collusion, as is hinted at in said resolution which I have just read. All I know about this matter is what I saw in the bill appropriating this \$100,000. There was reserved by the treasurer's office of the nation \$8,000 to pay for all expenses in making the payment to the freedmen.

I paid as attorney fee to Robert H. Kern \$126,666 upon the law appropriating this money. I paid this money upon contract between Mose Whitmire and Robert H. Kern, which I filed in the treasurer's office, and not upon warrant of the principal chief. I know nothing about any your officers getting any part of this attorney fee. The freedmen money amounted to \$380,000, one-third of which was accounted attorney fees, and I have a relinquishment from R. H. Kern, as attorney, for the freedmen for any part of the \$400,000 not having been paid.

D. W. LIPE.

Sworn to and subscribed to before me this 29th day of November, 1897.

JESSE RAYMOND, *Chairman.*

EXHIBIT G².

TAHLEQUAH, IND. T., December 27, 1897.

Hon. D. W. LIPE,

Treasurer Cherokee Nation.

SIR: We are instructed by the Secretary of the Interior to investigate certain matters pertaining to the recent payments to the Cherokee freedmen.

By a decree of the Court of Claims of February 3, 1896, there was set aside out of grass and "Outlet" money the sum of \$903,363, to be paid pro rata to the freedmen of the Cherokee Nation. For the purpose of equalizing "the freedmen with the Cherokees," and in pursuance of the agreement entered into January 28, 1896, between S. H. Mayes, principal chief, and Robert H. Kern and Moses Whitmire, trustee, etc., the national council, on March 27, 1896, passed an act appropriating the sum of \$400,000, directing that the same be paid by the treasurer of the Cherokee Nation to the freedmen of the Cherokee Nation as their names shall appear upon the roll approved by the Secretary of the Interior, after deducting certain unestimated amounts set up in said act.

We have the honor to request that you furnish us with the following information:

First. What is the full sum paid out by you as treasurer of the Cherokee Nation in pursuance of said act?

Second. Please give us the full sum paid out by you to the attorneys for Moses Whitmire under the first section of the act approved March 27, 1896, and to whom paid, date, and manner of payment?

Third. The full sum paid out in expenses in making the payment to the freedmen? Fourth. What sum, if any, has been returned to the Cherokee treasury from the \$400,000 appropriation under said act?

Fifth. What was the per capita payment made by you as treasurer to the freedmen in pursuance of said act?

An early response will greatly oblige us and greatly facilitate the investigation now being conducted.

Very respectfully,

W. J. MCCONNELL,

United States Indian Inspector.

GEO. C. ROSS,

Assistant Attorney Interior Department.

TREASURY DEPARTMENT, CHEROKEE NATION,

Tahlequah, Ind. T., December 28, 1897.

Statement of Cherokee freedmen strip fund, as provided by act of the national council approved March 27, 1896:

Aug. 12. To amount received from Secretary of Interior	\$380,000.00
Aug. 15. By amount paid Robt. H. Kern, attorney fees, 3 checks of \$42,222 each.....	126,666.00
1897.	
July and Aug. By paid freedmen, per pay rolls	236,215.20
July and Aug. By paid general expenses in attending payment.....	9,346.80
Sept. 30. By amount to balance unclaimed shares.....	7,772.00
	<hr/> 380,000.00
Sept. 30. To balance on hand unclaimed shares	7,772.00

NOTE.—Division of—

1896.	
Aug. 12. Amount balance outlet fund received	\$481,779.86
Amount to freedmen, act March 27, 1896	380,000.00
Amount to Delawares, March 30, 1896	41,857.11
Amount to Shawnees, March 30, 1896	59,922.75
	<hr/> 481,779.86

I hereby certify that the above is a correct statement as stated. Given under my hand the day and date first above written.

D. W. LIPE,

Treasurer Cherokee Nation.

TREASURY DEPARTMENT, CHEROKEE NATION,
Tahlequah, Ind. T., December 28, 1897.

Hon. W. J. McCONNELL, *U. S. Indian Inspector*, and Hon. GEO. E. ROSS, *Assistant Attorney, Interior Department, Tahlequah, Ind. T.*

SIRS: Find inclosed statement of freedmen strip fund per act of the national council of date March 27, 1896, as per your request of the 27th inst.

Very respectfully,

D. W. LIPE,
Treasurer Cherokee Nation.

EXHIBIT H.—*Statement of J. T. Cunningham.*

BOARD OF EDUCATION, December 2, 1897.

I have heard a great deal of talk about \$126,000 being divided among certain officials and citizens of the Cherokee Nation. I had an opportunity to go to St. Louis, Mo., and see proofs of the fact. I saw affidavit of Frank Boudinot, made before Bob Butler, of Fort Gibson, a notary public, in which he states that there was a private agreement between Robert H. Kern, chairman of freedman court, and S. H. Mayes, principal chief; C. J. Harris, delegate; W. W. Hastings, attorney; E. C. Boudinot, J. S. Stapler, Ed. Campbell, and Jake Guthrie, in which they were to share equally in a division of \$60,000, and that he only received \$1,700 for his brother's widow. The reason given why he did not receive more was they had to pay others, names not given, in order to get the appropriation passed. I also saw the affidavit of Ashly Boudinot, substantiating the affidavit of Frank Boudinot; and, further, her husband before death told her Mr. J. S. Stapler would attend to getting her portion for her. This is about all I know.

J. T. CUNNINGHAM.

Subscribed and sworn to before me this December 2, 1897.

JESSE RAYMOND, *Chairman.*

EXHIBIT H².—*Statement of Jesse B. Raymond.*

Mr. Jesse B. Raymond, being first duly sworn, deposes and says that he is a Cherokee both by birth and by blood; that he is 29 years of age; that his place of residence and post-office address is Webbers Falls, Ind. T.; that he is a member of the Cherokee national legislature, and was a member during the last session of that body, during which time he was appointed on a special committee to investigate the irregularities of the freedmen compromise and a diversion of a portion of an appropriation of \$400,000, made by the Cherokee national legislature during a prior session. The committee, of which I was a member, proceeded to take testimony and did take testimony of several witnesses and reported the same to the Cherokee national legislature. This testimony, as given by the various witnesses, was marked exhibits as follows: A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q. At the request of Hon. W. J. McConnell, United States Indian inspector, I have caused the evidence taken by said commission, of which I was a member, to be correctly copied, marking the exhibits the same as the originals, to wit: A, B, C, and D, etc. I have delivered said aforesaid copies to aforesaid W. J. McConnell, United States Indian inspector, and I hereby certify that they are true copies of the original.

JESSE RAYMOND.

Sworn and subscribed to before me this the 27th day of December, 1897.

W. J. McCONNELL,
United States Indian Inspector.

EXHIBIT I.

OFFICE BOARD OF EDUCATION,
November 3, 1897.

G. W. Bengler, who being duly sworn in the matter of the investigation of the \$400,000 appropriation in favor of the freedmen, says:

As to corruption I know nothing about the matter. My first conception of the matter when the proposition to compromise was first presented to the national council. This was before the council of 1895, at which time the compromise appropriation passed. My knowledge of the subject when I first became acquainted with

this matter was not more than any other citizen having nothing to do with it. At the previous council of 1895 Mr. E. C. Boudinot was sent to Washington City by the national council as an attorney to represent the nation in the freedmen matter, to make an attempt, as well as I can remember, to get an appeal from the Court of Claims to the Supreme Court of the United States, and I believe there was a called session of council between then and the fall of 1895, at which time the proposition to compromise was made, instead of as stated above.

I was sent as a delegate, together with C. J. Harris, Robert Young, and James Smallwood at the regular session of 1895, at which time Mr. E. C. Boudinot was re-sent to try and effect the compromise contained in the act of council December 5, 1895.

Some time during two sessions of Congress, Boudinot and R. H. Kern, attorneys for freedmen in said compromise, requested the delegation to meet them in the room of Chief Mayes at the National Hotel in Washington City to witness a contract they, Kern and Boudinot, had entered into affecting a compromise, as I understood, he was authorized to make.

The delegation witnessed the contract, which in substance was that the Court of Claims should enter a decree in which a new commission should be organized to sit as a committee on citizenship for the freedmen and all unauthorized persons stricken from the Wallace roll. Then, and in that, the nation should pay to the citizens thus acknowledged enough money to make them equal in this respect as other citizens who had drawn more money than them, and \$400,000 was appropriated for this purpose, or so much thereof as was necessary.

After the signing of the contract Mr. Mayes or some one said they want me to call a special session of council to carry out the agreement, and Kern says he won't agree to his part unless I do that or something to that effect, and Mr. Mayes since has drawn a contract to call a council, and I think you ought to sign it with me. My answer was, that was a matter I had nothing to do with.

Afterwards the delegates signed the contract—the reason for doing so are that he wanted the sanction of both parties in the premises that there might be no party issue grown out of the matter.

Mr. Mayes agreed to call a council and recommend the adoption of the agreement, a compromise entered into between Kern and Boudinot.

Extra session of council was called in March, 1896, for the purpose of conveying out the agreements and compromise. I did not return from Washington City to Tahlequah, Ind. T., the time I was delegate to assist in carrying out the provisions of the contracts entered into with Mr. Mayes at Washington City above referred to, appropriating \$400,000 to the freedmen. I came home at the solicitation of Mr. Young, who was a senator. Mr. Young, not speaking the English language, found it difficult to translate and I came with him. Mr. Young would not agree to come at all unless I would come with him. I only favored the compromise at the council when my opinion was asked, and would favor it yet if the purport of the compromise could have only been fully carried out. I do not think the terms of the contract have been carried out by any means. I only know of any other contracts by what I have seen. I have seen some affidavits by Mrs. Ada Boudinot and Frank Boudinot and others. I saw them in St. Louis. I read the affidavits and from what I have heard and seen believe there must have been some corruption in this transaction between parties here and Mr. Kern. A short time before Mr. Boudinot left Washington for his home—where he died shortly after arriving—he was talking to me about his condition and said he had everything settled, he was not afraid to die—but thought he was afraid these people would not treat Adda (his wife) right.

G. W. BENDER.

Sworn to and subscribed before me this November 20, 1897.

JESSE RAYMOND, *Chairman.*

EXHIBIT J.

DECEMBER 1, 1897.

De Witt Wilson, who, being duly sworn, says in the matter of the investigation as authorized by a resolution of council:

I was in Tahlequah during the last special session of council of 1896 as well as many others as I live in Tahlequah and have been for many years employed as salesman in John & James Stapler's store.

I have often heard from many that there were men who received a portion of the \$126,000 for work lobbying this \$400,000 appropriated through council.

I have heard Mr. George Benyer, Richard Wolf, C. J. Harris, W. W. Hastings and

John Sharp. These are all the names I can now remember of having heard who should have received a portion of this money.

I know of no checks having been placed in Mr. Stapler's hands for collection. I do not know of any such money ever having been deposited in the store or bank.

Knowing what I do, from having heard so much talk, I believe there was considerable money divided up out of the \$400,000 appropriation.

D. W. WILSON.

Subscribed and sworn to before me this December 1, 1897.

J. H. GIBSON, *Acting Chairman.*

EXHIBIT K.—*Statement of W. H. Hendricks.*

OFFICE BOARD OF EDUCATION,

December 2, 1897.

At the time the \$400,000 was appropriated for the freedmen during the year 1896, I was a member of the Cherokee senate for information. I consulted S. H. Mayes, W. P. Thompson, W. W. Hastings, C. J. Harris, and others in regard to the so-called freedmen compromise. Their answer was that they thought that to pass the compromise bill would be the best thing the Cherokee Nation could do. Three negroes living in Fort Gibson (their names I do not remember) told others in my presence that they paid or promised to pay to be enrolled on the Clifton rolls. Frank Vann (colored), of Illinois district, was present at the time.

W. H. HENDRICKS.

J. H. GIBSON, *Acting Chairman.*

EXHIBIT L.—*Statement of Dr. R. L. Fite.*

BOARD OF EDUCATION, *December 2, 1897.*

During the freedmen payment at Hayden, Ind. T., I had a talk with Richard M. Wolf. This was in the spring of 1897. In this conversation with Mr. Wolf he told me there were some parties anticipated in the division of the \$126,000 deal, naming Sam Smith, Robert Young, George Bengé, W. W. Hastings, and others, and he (Wolf) said I might say myself, got some of the money, about \$1,500, and others getting more, from \$2,000 and upward. To the best of my knowledge, this is the substance of the conversation had with Mr. Richard M. Wolf.

R. L. FITE.

J. H. GIBSON, *Acting Chairman.*

EXHIBIT M.—*Statement of J. S. Stapler.*

OFFICE OF BOARD OF EDUCATION,

December 2, 1897.

The current rumor of a check or anything of value being deposited at Bank of Tahlequah for payment to Cherokee officials or others is absolutely false. I did not bring any money or cause any to be brought from St. Louis or anywhere else in connection with this matter. I know nothing of any collusions between Robert Kern and any officials in regard to this matter.

J. S. STAPLER.

J. H. GIBSON, *Acting Chairman.*

EXHIBIT N.

OFFICE BOARD OF EDUCATION,

Tahlequah, Ind. T., December 2, 1897.

In March, 1896, I was approached by F. J. Boudinot to pass the compromise bill and that he wanted me to talk in favor of the bill. It was understood that if anything or any money was made out of the deal that I was to get a part. He afterwards told me R. H. Kern, and I think W. W. Hastings and others, had beat Cornelius out of his part of the money.

I do not know of any of this money ever being paid. I thought at the time that the passage of the bill was the best thing for the Cherokee Nation. I do not think so now.

ALBERT TAYLOR.

J. H. GIBSON, *Acting Chairman.*

EXHIBIT O.—*Evidence of H. M. Adams.*

All I know about the matter of the \$400,000 negro compromise are sworn statements of F. J. Boudinot and Ashly Boudinot. I do not remember the dates, but the statements were made before Butler at Fort Gibson. I do not know anything of present officers of the Cherokee Nation securing a part of the compromise.

I saw a part of the statement made by Milton Turner, as they are in St. Louis in the possession of R. C. Adams.

H. M. ADAMS.

Subscribed and sworn to before me.

J. B. RAYMOND, *Chairman.*

EXHIBIT P.

Before joint committee of investigation.

OFFICE BOARD OF EDUCATION,
November 29, 1897.

Robert M. French, who being duly sworn, states that I saw darkies who drew money and whose names were upon the rolls of colored pupil known as the Clifton roll, who were not entitled to participate in the payment of moneys.

I do not know anything about any collusion between our national officers and the lawyers on the part of the freedmen, whereby there was any money paid any of our officers.

ROBERT M. FRENCH.

Subscribed and sworn to before me this 29th day of November, 1897.

JESSE RAYMOND, *Chairman.*

EXHIBIT Q.—*Amount collected after you left Fort Gibson.*

SCHEDULE 1.

No. 1. Frank Whitmire	\$30.00
2. Cynthia Johnson.....	10.00
3. Sam Starr.....	3.00
4. Ike Holderbreund.....	10.00
5. Sopha Campbell.....	10.00
6. Jennie Gentry.....	10.00
7. Tom Rankin.....	30.00
8. Wren Rankin.....	30.00
9. Ann Brown	10.00
	<hr/>
	123.00

Disbursed as follows:

Per Stidman & Duncan.....	3.00
To Keys & Brown, as per agreement	80.00
To J. Milton Turner.....	40.00

123.00

SCHEDULE 2.

No. 1. Callus West.....	100.00
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Disbursed as follows:

To J. Milton Turner.....	75.00
To Keys & Brown	25.00

100.00

SCHEDULE 3.

No. 1. Dollie Thompson.....	\$50.00
2. Lillie Carter.....	30.00
3. Polly Thompson.....	20.00
	<u>100.00</u>
Disbursed as follows:	
Paid to three friends.....	23.00
Paid to Butler.....	5.00
	<u>28.00</u>
Refund to Patsy Ross.....	10.00
	<u>38.00</u>
To Brown & Keys.....	62.00
	<u>100.00</u>

EXHIBIT R.

St. Louis, Mo., December 1, 1897.

The first acquired knowledge of this case came to me by reason of a misunderstanding between Robert H. Kern and J. Milton Turner. I was called into the case by Mr. Turner, to look after some private affairs growing out of the freedmen matter.

In the course of adjusting these affairs it was necessary for me to be in the Indian Territory. While there I had occasion to employ the services of various persons to assist me in the undertaking, among whom was one James M. Keyes, a Cherokee Indian, whose business relations necessitated our associations for some six weeks during the months of July and August, 1897. I was in the Territory for the purpose of collecting money due J. Milton Turner on private contracts with the Cherokee freedmen. In order to facilitate the collections of the debts aforesaid I was recommended to employ the said Keyes to assist me therein on account of his valuable knowledge with regard to the legal status of the freedmen as to their rights of citizenship, and that he knew more of them personally, and more of the facts connected with their history than any other man in the Territory, and that his services would be invaluable to me in pursuance of the business in hand. During the time said Keyes was so employed it was necessary for him to avail himself on many occasions of the benefit of this knowledge in order that we might succeed in collecting moneys from people who were not inclined to pay; and on many occasions he stated to persons refusing to pay the contract that if they persisted in their refusal that he would see that they were off the rolls; that he knew that they knew that they had no right on the roll any more than a man that was never born; that the evidence that placed them there was all perjury by them; that when they were admitted to the roll they were not and never were citizens of the Cherokee Nation—and that the said Keyes stated to me (affiant) on many occasions that there were from ten to twelve hundred persons on the roll known to him (Keyes) to be impostors, individuals whose homes, and residences, and places of native birth were known to him (Keyes) to be in other States and Territories, namely: Arkansas and Creek and Choctaw nations, the States of Kansas and Texas, and other Southern States, and I was led to believe from the statements of said Keyes that he knew as a representative of the Cherokee Nation and their attorney at the time the testimony was taken admitting the freedmen to the said roll that they were not justly entitled to become citizens, and that he could have prevented same by an honest performance of his (Keyes's) duty.

The said Keyes also stated to me on many occasions that he knew that there were from ten to twelve hundred persons on that roll who had no legal right whatever to participate in the lands and moneys belonging to the bona fide citizens of the Cherokee Nation; the said Keyes also advised with me on many occasions to try to get a large fee from the Cherokee Nation, in which he (Keyes) would share and assist me in purging the roll of all those names which were thereon as aforesaid without warrant of law. I paid to the said Keyes for the services referred to a large and enormous consideration, wholly on account of his secret knowledge with reference to the authenticity of the rights and the perjured condition of the freedmen's rights. It is my opinion and belief from all I know of and have talked of with the said Keyes, whose statements were voluntarily made, that he (Keyes) was fully aware at all times that a great fraud and injustice was being perpetrated and carried out against the rights of the lawful citizens of the Cherokee Nation, and that the same was done in violation of both law and duty.

I could state at this time much more fully than I have done herein upon these lines, but I do not deem it necessary so to do at this time. I am possessed of a great deal of information of this character, and which at some future time will be more fully disclosed, as I deem this statement sufficient for the purposes for which it is made, and in reference to the party referred to herein.

A certain party now living in the Cherokee Nation, a negro by the name of Brown, who is a freedman, possesses equal knowledge of the whole transaction with reference to the fraud of this character and the deception and unlawful means followed by which a large number of negroes were enrolled as citizens. I would say, further, that in conversations held with the said Keyes that said Keyes has expressed it frequently as his belief and opinion that if the case (referring to the making up of the rolls and the admitting of the evidence) had been carried to the Supreme Court of the United States that the judgment would have been reversed; and that to avoid the probability of failing, to maintain and establish the roll, that a compromise was had and made for the purpose of preventing the case from going to the Supreme Court, in which event they realized certain failure. And further affiant saith not at this time.

E. F. CUNNINGHAM.

STATE OF MISSOURI, *City of St. Louis:*

E. F. Cunningham, of lawful age, on his oath says that the facts set forth in the above statement are true and correct to the best of his knowledge and belief.

E. F. CUNNINGHAM.

Subscribed and sworn to before me this 2d day of December, 1897. (My commission expires July 31, 1899.)

S. A. H. MOSES,
Notary Public, City of St. Louis, Mo.

EXHIBIT T¹.—*Statement of C. J. Harris.*

TALHEQUAH, IND. T., *December 30, 1897.*

Mr. C. J. Harris, being duly sworn, on his oath says: I am ex-chief of the Cherokee Nation. I was elected to that office in November, 1891, and served the nation as chief until November, 1895. During my term of office, viz, on the 8th day of May, 1895, the Court of Claims filed a decree in case No. 17209, being the case of Moses Whitmire, Trustee for the Freedmen of the Cherokee Nation, v. The Cherokee Nation and the United States. In this decree was stated as follows:

"And it is further ordered, adjudged, and decreed that for the purpose of enrolling and enumerating the freedmen and colored men aforesaid and their descendants who are entitled to participate in the funds hereinbefore decreed to them; and it further appearing to the court that an enumeration of the aforesaid freedmen, free colored persons, and their descendants was made and approved under and by virtue of an act of Congress by the Secretary of the Interior Department of the United States, and that said census of aforesaid freedmen and free colored persons and their descendants known as the 'Wallace roll,' and that said Wallace roll contained the number of persons who were in existence on the 4th day of March, 1883, and that the number of said persons shown thereby was 3,524; and it appearing to the court that the defendant, the Cherokee Nation, did not participate in the preparation of the said Wallace roll, but that ample opportunity was afforded to do so: It is therefore adjudged and decreed that its refusal to do so is as effective as if it had actually taken part in the preparation of the said Wallace roll, and it is concluded thereby. It is adjudged and decreed that said Wallace roll, showing 3,524 of such persons, is approved by this court and taken by it as furnishing the true number of freedmen, to wit, 3,524 as being the number of freedmen to be entitled, together with other citizens of the Cherokee Nation, to be taken as the basis of estimating the amount of money to be decreed to be paid plaintiffs in this action."

This was not satisfactory to myself or the Cherokee Nation, as we believed that there was a large number of so-called freedmen enrolled on the Wallace roll who were not citizens of the Cherokee Nation and were not entitled to share in the benefits of freedmen or free colored persons. The Cherokee Nation, therefore, by enactment of the national council in September, 1895, provided that E. C. Boudinot should go to Washington, D. C., to represent the Cherokee Nation in taking an appeal from the findings of the Court of Claims to the Supreme Court of the United States, and an application for said appeal was filed by the aforesaid Boudinot as attorney for the Cherokee Nation. By act of the Cherokee national council in November, 1895, after my successor, S. H. Mayes, had been installed as chief of the

Cherokee Nation, provision was made for the appointment of a delegation of four Cherokee citizens to go to Washington, D. C., to represent the Cherokee Nation before the Departments and the Congressional committees. There was appointed as members of this delegation G. W. Bengé, Roach Young, Joseph Smallwood, and myself. The national council requested Chief Mayes to accompany us, which he did.

After we arrived in Washington we found that the compromise agreed to by the national council of the Cherokee Nation on December 7, 1895, had been denied by the Court of Claims, and that E. C. Boudinot, on behalf of the Cherokee Nation, and R. H. Kern, attorney for the freedmen, had agreed to make another compromise, which was acceptable to the Court of Claims, and upon the compromise filed its decree of February 3, 1896. Before the compromise was presented to the Court of Claims it was submitted by the attorneys in the case to Chief Mayes and the Cherokee delegation, and it was unanimously agreed that, provided the Court of Claims would accept the compromise, the application for an appeal and rehearing made by the parties to the suit be withdrawn.

Under the compromise entered into it was understood that the Cherokee roll of 1880 would be taken for a basis of enrollment instead of the Wallace roll, as provided in the decree of May 8, 1895, and from which we proposed to appeal. I understood that under the decree of February 3, 1896, which was agreed to by the Cherokee delegation and the chief of the Cherokee Nation, that the freedmen enrolled on the Cherokee roll of 1880, and their descendants alive and in being May 3, 1894, should be placed on the roll to be made up by the commission provided for by the court and that no others should be entitled to enrollment. To suppose that the Cherokee people, after objecting to the Wallace roll being taken as a basis, would agree to an arrangement under which, as has been done, hundreds, even thousands, of other claimants were admitted to the rolls, is to suppose that the Chief of the Nation and its representatives, the Cherokee delegation, were exceedingly reckless of the interest of their people.

I understood that if it was found by the commission that the Cherokee Nation, in making up the roll of 1880, had left off any freedmen who were justly entitled to enrollment under the terms of the treaty of 1866, that said commission should enroll them or submit their names with the evidence to the Secretary of the Interior for his determination.

C. J. HARRIS, *Ex-Chief Cherokee Nation.*

Sworn to and subscribed before me this December 30, 1897.

W. J. McCONNELL,
United States Indian Inspector.

EXHIBIT W¹.—Statement of F. J. Boudinot.

DEPARTMENT OF THE INTERIOR,
UNITED STATES INDIAN SERVICE.
Fort Gibson, Indian Territory.

Frank J. Boudinot being duly sworn, on his oath says: My age is 31 years; my post-office address is Fort Gibson, Ind. T.; occupation, an attorney at law. I am a brother of E. C. Boudinot, who died at Tahlequah, Ind. T., February 20, 1896. During his lifetime I was in partnership with him in the practice of law. By an act of the Cherokee council, passed in 1895 in the month of September, my brother was employed (being named in the act) for the purpose of visiting Washington, D. C., and there represent the Cherokee Nation in opposition to a judgment then rendered by the Court of Claims, recognizing what is known as the Wallace roll as correctly designating the true number of the Cherokee freedmen and free colored persons as entitled to equal rights with citizens by blood in the distribution of certain moneys. At the same session of the council the sum of \$5,000 was appropriated to pay the expenses of my brother in performing said duties, and to employ a firm of attorneys in Washington, D. C., to assist him in the work; that my brother employed the firm of Shellabarger & Wilson, to whom he paid the sum of \$2,500.

It was the purpose and great desire of the nation to prevent the Wallace roll being used, it being the opinion of myself, my brother, the chief, and many of the best-informed Cherokee citizens that there were many more persons named on said roll than there were freedmen and free colored persons in the nation entitled to receive the benefits of Cherokee citizenship.

An appeal from the judgment of the Court of Claims so recognizing and adopting the Wallace roll was rendered unnecessary by reason of a compromise entered into between my brother and his associate counsel, representing the Cherokee Nation, and R. H. Kern, representing the freedmen. This compromise accepted, what is known as the authenticated Cherokee roll of 1880, and its conditions are a matter of record.

The Court of Claims found that the freedmen were entitled to share in the distribution of \$6,640,000, and that of said sum the amount of \$903,265.34 should be distributed pro rata to the freedmen.

It was ascertained that there had been several payments made to the Cherokees by blood, and that to secure to the freedmen pro rata an amount of money equal to what had been paid to the Cherokees by blood pro rata, another sum of money must be appropriated. It being fully understood that the authenticated Cherokee roll of 1880 was to be used as a basis for making the new and full roll, and that no names were to be added thereto except those children of freedmen or free colored persons enumerated on said roll, and born between the taking of said roll and May 3, 1894; and from said roll should be stricken the names of all freedmen and free colored persons who had died between the aforesaid dates; and, if this had not been the understanding, I am sure that the appropriation herein aforesaid of \$400,000 would never have passed by the Cherokee council.

Accordingly, in March, 1896, the council appropriated \$400,000, ostensibly to make up this deficiency. Sam H. Mayes, principal chief now, and then, of the nation, called together the council for that purpose. One Moses Whitmire, of Cooweescoowee district, Cherokee Nation, was, by some means unknown to me, appointed trustee for the freedmen. Said Whitmire signed his name with a mark, and it is my understanding that he can neither read nor write.

About February 1, 1896, said Whitmire entered into a written contract (which contract affiant has seen and read), by the terms of which said Whitmire agreed that R. H. Kern, of St. Louis, Mo., should have the sum of one-third of \$400,000 for services in getting appropriated by the Cherokee council the said sum of \$400,000 for the freedmen. The bill appropriating said amount was, as stated to me by R. H. Kern, prepared by him. There was added to it a clause, suggested and insisted upon by myself, to the effect that the proposed appropriation of \$400,000 to be paid to Whitmire should be taken from the amount due the freedmen and charged to them. The bill as before said was passed in March, 1896. The council was in session about ten days from the time it convened before the act was passed making the appropriation. Affiant was present in Tahlequah, the capital of the nation, during all the term from the convening of the council until the appropriation was made, and used his influence in favor of the appropriation.

The bill making the appropriation was referred to a special committee of which, I think, S. R. Walkingstick was chairman, and the same was passed by both houses either on the day it was reported or the next day thereafter.

In the meantime R. H. Kern had been selected on part of the freedmen, W. P. Thompson on the part of the Cherokee Nation, and these two, together with — Clifton, were duly appointed by the Secretary of the Interior to make a roll of the freedmen entitled to share in the distribution. This committee commenced their work in April or May, 1896. About August, 1896, D. W. Lipe, treasurer of the Cherokee Nation, paid over to said R. H. Kern the sum of \$126,666.66. Affiant has seen the report of said Lipe showing such payment, and same was paid in three separate checks of about \$42,000 each, each given upon the United States subtreasury in St. Louis, Mo. Upon delivering to said Kern the said checks, that gentleman, together with W. W. Hastings, James S. Stapler, and J. E. Campbell, the last three being members of the Cherokee Nation (said Hastings being also the nation's attorney before the Clifton commission), went to the city of St. Louis. If Kern ever returned before the payment was made to the freedmen, affiant never saw him.

The parties above named, who accompanied him, returned to Tahlequah in about one week. Upon their return affiant went to said Hastings in Tahlequah and asked him for the amount due affiant for assisting in getting the appropriation through the council. Hastings then said that J. E. Campbell, then of Alluwe, had affiant's part of the money; about that time affiant received a letter from said Campbell, stating that \$4,000 was all that was left of the Kern money for affiant's and for affiant's deceased brother's share after expenses at Washington had been paid; that the expense at Washington consisted of a large sum paid by him to get the authorities at Washington to turn over to the treasurer of the Cherokee Nation the \$400,000. He further said in the letter that Hastings would pay affiant and Mrs. Boudinot, my brother's widow, the \$4,000. Affiant again went to Hastings, and told him that affiant understood he had the \$4,000 and asked him for it. Hastings replied that he did not have the money in Tahlequah, but that he would try and get it. Thereupon Hastings went to the Tahlequah Bank, of which James S. Stapler was president, and returned in a short time and took affiant in a private room and said that he (Hastings) had the written agreement between my brother's widow and affiant, by the terms of which my brother's widow was to receive 60 per cent of the amount due us as fees for assistance in securing the said appropriation, and affiant was to receive 40 per cent of said amount, and asked affiant if that was all he got. Affiant replied in the affirmative; thereupon said Hastings gave to affiant four checks of \$400 each, drawn on the Tahlequah Bank to his own order and by him

indorsed. These checks were by affiant given to three different persons, one being J. P. Carter, of Tahlequah, the other two not now remembered. Affiant collected the full face value of the checks, \$1,600 in all; affiant was afterwards informed that checks amounting to \$2,400, the balance of said \$4,000, was by said Hastings given to Mrs. Boudinot.

About October, 1895, affiant saw a telegram from Nowata, Ind. T., and signed by either Jacob Guthrie or J. E. Campbell; affiant now forgets which of the names was signed to said telegram; this telegram was addressed to my deceased brother, E. C. Boudinot, and asked the latter if he could be at the Midland Hotel in Kansas City, Mo., on the following night; my brother answered the telegram, stating that he would be at the place mentioned, and gave the time upon which he would arrive. Affiant knows that his brother and brother's wife did go to Kansas City as per said request; a few days thereafter my brother returned and reported to me that he had been to Kansas City, and there met R. H. Kern and J. E. Campbell and others, and talked over with said parties the scheme of getting through an appropriation, which is above described in this affidavit, and that the parties would all make a large sum of money, and that the affiant was to share with his brother in the enterprise. That no written agreement was entered into, but by the terms of the understanding the said Kern was to receive from the Cherokee Nation the full amount of money, about \$126,000, as then supposed, out of which said Kern was to pay \$50,000 in several parts to six different persons, which my brother named as follows: J. E. Campbell, of Alluwe, Ind. T.; Jacob Guthrie, W. W. Hastings, of Tahlequah, Ind. T.; C. J. Harris, of Tahlequah, Ind. T.; S. H. Mayes, the chief, and my brother and I as a firm.

On the following December—that is, December, 1895—my brother, the said Hastings, Guthrie, Campbell, Mayes, and I think C. J. Harris, went to Washington, D. C. My brother returned in January, 1896, and died February 20 of that year. He again told me that the understanding had in Kansas City was by all of said parties again discussed in Washington, D. C., the details talked over and the same understanding as to the division of the \$50,000 was had, but this time on a new basis. The Court of Claims would not make it as a part of its decree that the \$400,000 should be appropriated from the Cherokee fund, and it became necessary that an appropriation should be made by the Cherokee council, which, as above seen, was done.

From the above considerations and facts given the affiant is confident that the said Hastings, Mayes, Harris, Campbell, and Guthrie received of R. H. Kern moneys for their influence in getting the said appropriation of \$400,000 passed by the council.

FRANK J. BOUDINOT.

Sworn to and subscribed before me this December 20, 1897.

W. J. McCONNELL,
United States Indian Inspector.

Committee report.

OFFICE OF BOARD OF EDUCATION,
December 4, 1897.

To the NATIONAL COUNCIL.

GENTLEMEN: We, the committee appointed under authority of your joint resolution No. 6 directing us to investigate, report that \$126,000 or a part of it, the same being a part of the \$400,000 compromise made for the benefit of the freedmen of this country, beg leave to inform you that the committee thus appointed held their meetings in the rooms of the board of education. The committee after assembling proceeded to elect a chairman. Mr. Jesse Raymond and Geo. Sanders were nominated, and, vote being taken, Mr. Raymond was declared elected. Mr. Mose Sanders, a regular clerk of the senate committees, was chosen clerk, and Mr. Frank Consent acted for a time as interpreter. Mr. Joseph Sequitchit was employed to act as interpreter, and has been with us all the time since. The committee hearing that there was testimony in the city of St. Louis, Mo., bearing upon the subject we were trying to bring to light, concluded it wise and proper to send a part of the committee after this evidence. Messrs. Jesse Raymond, Wm. Vann, John Sanders were selected to go to St. Louis and procure this evidence.

Messrs. Raymond and Vann, with a portion of the papers they went for, and there being one important statement that had been written up, but not qualified to, Mr. John Sanders remained over to secure this evidence. The statement is one Mr. Cunningham, of St. Louis, Mo. Mr. Sanders has not yet returned to Tahlequah with the paper mentioned. He may be in through the course of the day.

Your committee have done all in their meager way to inform you concerning the reported corruptions of officers and citizens of our nation.

Herewith we hand you statements A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, respectively, made by Frank Boudinot, Mrs. E. C. Boudinot, George Bengé, contracts between J. Kerns and J. Milton Turner, Chas. O. Fryn, F. J. Boudinot, D. N. Lipe, J. T. Cunningham, Geo. Benger, D. N. Wilson, A. H. Hendricks, R. S. File, J. S. Stopar, Albert Taylor, H. M. Adams, Robt. French, and data from James M. Keys, which are made a part of this report.

We respectfully submit the same for your consideration.

JESSE RAYMOND, *Chairman.*
J. H. GIBSON,
WYLLIE BOLIN,
JOHN SANDERS,
Council Committee.
CONNELL ROGERS,
WM. VANN,
Senate Committee.

Mr. George Sanders has not attended the meetings regularly of the committee, he having been really present but twice. He was notified of the meeting this morning and of the desire of the committee to make a report. Not having presented himself, we have concluded that he does not desire to sign the report, consequently make the report without his signature.

JESSE RAYMOND, *Chairman.*

WASHINGTON, D. C., *January 17, 1898.*

FRIEND KERENS: I hate to trouble you, but if you will speak a word in my favor to Secretary Bliss, I will be greatly obliged. I have been, as you know, for years fighting the battle in the courts for a few thousand negroes against the Indians. The successful result of the fight in favor of my clients was perfectly satisfactory to them. However, ever since its close the Indians have been hollering fraud, and charging me with everything on the face of the earth, and now have furnished the Secretary with a lot of affidavits procured in the Territory on the usual terms. I am perfectly willing to lay before the Secretary everything I ever did in this case, and deny everything with which these people chose to charge me. Messrs. Blodgett & Lehman were with me in this litigation, and Judge Laughlin to its end.

I will return here early next week, and if you will give me a moment of your time I will give you all the facts. Promising to reciprocate,

I am, your friend,

R. H. KERN.

JANUARY 18, 1898.

Hon R. C. KERENS, *Washington, D. C.*

FRIEND KERENS: I called at the Cairo yesterday, hoping to find you in, but learned that you had not arrived, and was compelled to leave Washington this morning. I will give you as condensed a statement as I can of the matter that Judge Priest and I spoke to you about. In connection with Blodgett, Lehmann, Laughlin, and Turner, we got a judgment for the negroes of the Cherokee Nation against the Cherokees in the Court of Claims for \$1,000,000. We felt the negroes were entitled to about \$400,000 more, and the Cherokees thought the court had allowed too many negroes. We were willing to accept the judgment, but they were not, and announced that they would appeal the case to the Supreme Court of the United States. For some four months negotiations were pending looking to a compromise of this case. Finally a compromise of it was reached on certain conditions. One of these conditions was that a commission should be appointed to determine the number of negroes entitled to a share, and that the Cherokees should prepare \$400,000 more than the judgment to equalize them if needed with the Cherokees themselves in the payment of the common money. I went on this commission for the negroes, the Cherokees selecting one, Secretary Smith naming a third, and confirming all. After several months' hearing of testimony, the commission reported about 4,400 names. The Department added 150, and these moneys were paid out on this basis. As this was about 2,000 more negroes than the Cherokees expected, they began to cry "fraud" on the part of their council, chief, prominent citizens, and the counsel for the negroes. The matter was investigated by one grand jury and a court; Secretary Francis investigated some of the charges against me and reported "no foundation," and recently one R. C. Adams, who has a contract to recover 157,000 acres of land from the Delaware Indians for the Cherokees, has taken up the fight, as he says, from patriotic motives.

I went to the Secretary ten days ago and gave him my statement of the whole thing, and expect about next Tuesday or Wednesday to have the statement in writing of all the attorneys connected with the case, which I think ought to satisfy anyone that we entered into no conspiracy and robbed the Cherokee Nation in this compromise. The Secretary sent the Commissioner to the Indian Territory recently and I assume from what I hear that he has only heard one side of this controversy. Of course the whole Cherokee Nation is willing to do anything to hurt the negroes, and they are filing affidavits stating I was in partnership with Turner, while I was on the commission, in fees the negroes paid him to represent them before the commission, and I suppose they have charged everything else on earth besides. I have papers which I will bring with me to Washington next week, which I will show you, explaining exactly my connection with the whole matter. I fought for these negroes for seven years against the Cherokees, and of course I left no friends in that country but the negroes, and they have been villifying and abusing me from the start to the finish. What I would like to have done is that you will acquaint the Secretary with my character and standing, and I assume he probably knows a good deal about that country. I have not been to the Territory to see anyone in reference to these matters and don't know what affidavits or statements the commission or Adams has in reference to me. I wish to say that the Secretary has been exceedingly nice to me and promised to let me see the report of the commission before anything is done in reference to it. As you know I have lived all these years and been in very much important communication outside of the crime of being a Democrat. There has never been one word said against me. Of course these people in the Territory are willing to do anything on earth, swear anything to get rid of the negroes who they kicked around for thirty years until I got into this fight, and they are perfectly willing to sacrifice my life and reputation to accomplish this purpose.

I have taken advantage of a few idle moments on my way to Chicago to write you this short statement. I will be in St. Louis Friday, and expect to leave there Sunday night for Washington. I have always appreciated your friendship and will be very thankful for anything you may do for me in the premises. Colonels Fordyce and Blodgett and a hundred other reputable citizens of St. Louis are willing to come to Washington with me in the fight against these scamps. I think I will be able to show before I am through that Mr. Adams is simply in a blackmailing scheme against me. I have had more than one offer to buy any evidence I had, and I have declined giving, and I have done nothing that I wish to conceal from anyone.

Hoping you will see your way to help me in this matter, I remain,

Yours truly,

R. B. KERN.

[Indorsement.]

Respectfully referred to the honorable Secretary of the Interior, with the request that he give the letters of Mr. Kern due consideration.

R. C. KERENS.

Statement of John P. Welsh.

John P. Welsh, of Spavinard post-office, Ind. T., being duly sworn, says:

I am a Cherokee Indian and am interpreter for the national council; I was acting in that capacity at the council which was convened in special session in March, 1896, in Tahlequah.

The bill appropriating \$400,000 to equalize the freedmen with the Cherokee citizens by blood was referred to a special committee in the senate, viz: Levi Cookson, Simon Walkingstick, Daniel Gritts, Henry Lowry, David Faulkner.

When said bill was first read and referred all said members appeared to be deeply opposed to it. Afterwards W. W. Hastings, George W. Bonge, and Sam Smith appeared before the committee and urged a favorable report. The committee called on said men to do so. After this the committee all were in favor of the bill, and worked for its passage, both in the senate and house.

Ed. Campbell, W. W. Hastings, and others lobbied for the bill. Simon Walkingstick, a member of the senate and also of the special committee, told me he was promised a bonus for working for the bill and for voting for same. Samuel Smith, the president of the senate, told me an old darky gave \$25 as a present after he had voted for the bill; the money was given to me (or at least \$150 of it) by James S. Staples, a banker of Tahlequah; on what I understood was said Guthries owing, the other \$25 was handed to me by said Guthries.

JOHN P. WELCH.

Sworn to and subscribed before me this December 29, 1897.

W. J. MCCONNELL, *Indian Inspector.*

Statement of Mrs. Addie Boudinot.

TAHLEQUAH, IND. T., December 29, 1897.

Addie Boudinot, of Tahlequah, Ind. T., being duly sworn, on her oath says: I am the widow of E. C. Boudinot, who died in Tahlequah, Ind. T., February 20, 1896. My husband was the attorney for the Cherokee Nation in opposition to the claims of certain negroes living in the Cherokee Nation who claimed certain beneficere rights from the sale of the Cherokee strip. It was my understanding that Frank J. Boudinot, who was my husband's brother, was a partner of my husband in civil cases in the practice of law. About November, 1895, I accompanied my husband to Kansas City, Mo. We stopped at the Midland Hotel. Mr. J. E. Campbell joined my husband at that place and accompanied us to Kansas City, stopping at the same hotel. I did not see either W. W. Hastings, S. H. Mayes, Jacob Guthrie, C. J. Harris, or James S. Stapler in Kansas City; did not know that they or either one was there, nor did I hear my husband say they were there, and I do not believe anyone of said parties was there, else I think I should have heard about it. When we got to Kansas City we found Mr. Robert H. Kern, of St. Louis, there; Kern stopped at the same hotel and was there representing the freedmen in the Cherokee Nation, my husband being the attorney on the other side.

I never heard my husband and Mr. Kern discussing any business matters; with Mr. Campbell then left our room in the hotel; my husband never told me anything about the business which took him to Kansas City; he never told me anything by which I might even suspect the purpose of his visit or infer the subject-matter under discussion between him, Mr. Kern, and Mr. Campbell; we only stayed one day in Kansas City and then returned home. In December, 1896, my husband went to Washington, D. C., and I went with him; we stopped at the National Hotel; Mr. G. W. Bengé, C. J. Harris, W. W. Hastings, jr., E. Campbell, James S. Stapler, and Mr. S. H. Mayes, the chief, were all in Washington during that month; all these parties stopped at the National Hotel except Mr. Stapler and perhaps Mr. Campbell, who stopped at the Metropolitan Hotel; I was told, my recollection is, that my husband and I returned home the last day of January, 1897. My husband while in Washington was in very bad health and I had to be with him protractedly all the time. Mr. Robert H. Kern, who was also in Washington, and I frequently saw him at our hotel. While in Washington Dr. Chamberlain of that city was my first husband's physician and told my husband that he could not live but a short time; my husband fully realized his condition and so expressed himself, living only twenty-eight days after his return home.

While in this condition my husband frequently made known to me his business condition, his accounts, claims, etc., in order that I might be able to realize on them after his death.

Certain claims were made known to me and were written out by me, being dictated by my husband, who was then very sick and in bed, in said hotel. That paper I now have and from it read as follows:

"Money due me soon that Addie should know of, if I were in condition not to tell, one-third of which I went and placed at interest for my father and mother, for their lifetime, to revert then (at their deaths) to the children of R. F. Boudinot, my brother, and the other two-thirds to Addie. Due me from Ed Campbell, jr., Stapler, and other of the attorneys in the 'negro compromise' case for the negroes are awarded, \$7,200. From Delawares by Hastings, if the Delawares are provided \$295.35 per capita, \$1,250. From Shawnees by Harris and Guthrie, if Shawnees are paid \$295.35 per capita, \$2,200. Due me for expenses in 'compromise case,' \$471.70. Old Settlers claim, less obligation, \$8,000."

I do not recollect that my husband said anything about other persons getting any funds from the compromise. He said to me that the \$7,200 was to come from a fee received by Mr. R. H. H. Kern; I received from the sum coming from Kern \$2,400; this was all I have received; this money was paid to me by Mr. W. W. Hastings, who I suppose received it of R. H. Kern, to whom the records of the Cherokee Nation shows there was paid the sum of \$126,666, on what is called here the negro compromise.

MRS. ADDIE BOUDINOT.

Sworn to and subscribed before me this December 29, 1897.

W. J. MCCONNELL,
United States Indian Inspector.*Affidavit of Connell Rogers.*

FORT GIBSON, IND. T.

Connell Rogers, being duly sworn, makes the following statement: My age is 47 years; my post-office address is Fort Gibson, Ind. T. I am a senator from the Illinois district of the Cherokee Nation and as such am a member of the national council of

the Cherokee Nation; I was elected to said position in August, 1897, and my term will expire by constitution limitation in 1899.

About November 25, 1897, the Cherokee council passed a resolution through both houses providing for the appointment of a joint committee consisting of seven members, three from the senate and four from the council, to investigate the alleged frauds and corruptions, the making of the Clifton roll and the securing of the appropriation of \$100,000, whereby the sum of \$126,666 was said to have been divided among certain Cherokee officers and R. H. Kern to corrupt the council to secure the appropriation.

In pursuance of said resolution the president of the senate appointed from that body George Sanders, of the Satine district, myself, of the Illinois district, and William Vann, of the Canadian district.

The speaker of the house appointed Jessie Raymond, of the Canadian district, John Gibson, of the Delaware district, John Sanders, of the Coowee district, and Wiley Bolin, of either Flint or Goingsnake district, I forget which. This committee was appointed the day following the passage of the resolution, and proceeded to organize by electing Jessie Raymond president of the committee.

The committee met daily for about one week in Tahlequah and took several affidavits bearing upon the subject. The affidavits, as I now remember them, were Frank J. Boudinot, of Fort Gibson; J. S. Cunningham, Robert French, William P. Thompson, A. A. Taylor, Dr. Fitts, James Stapler, George W. Bengel, and D. W. Gipe, all of Tahlequah, Ind. T. Part of the committee also went to St. Louis and obtained from R. C. Adams certified copies of former statements of Frank J. Boudinot and Mrs. E. C. Boudinot, and also an original statement from one Cunningham, who, in connection with J. Milton Turner, was in the Cherokee Nation during the freedmen payment engaged in collecting from the negroes fees for getting negro names on the Clifton roll. A report of the committee was made to the council on the last day of its session. The committee made no recommendation, but presented the affidavits above named for the action of the council. The report was made at the earliest practicable moment. It being the last day of the session when the report was submitted, and there being other important legislation, the report was laid aside and no action taken.

CONNELL ROGERS.

Sworn to and subscribed before me at Fort Gibson, Ind. T., this the 21st day of December, 1897.

W. J. McCONNELL,
United States Indian Inspector.

Statement of of S. H. Mayes.

TAHLEQUAH, IND. T., December 28, 1897.

Mr. S. H. Mayes, being duly sworn, says:

I am chief of the Cherokee Nation; was elected to my present office in November, 1895. My term expires four years from the date of my election. I was born in the year 1815, and have always lived in the Cherokee Nation. I was in Washington, D. C., in 1896, when the so-called compromise agreement was made between the representatives of the Cherokee and the representatives of the freedmen. Under the stipulation then entered into I agreed to call and did call an extra session of the Cherokee council to meet on the — of —, 1896. The object of the special session was to ratify the compromise agreement entered into by the representatives of the Cherokees and freedmen in Washington, D. C., and upon which the decree of the Court of Claims, filed February 3, 1896, was based. To carry out the terms of the aforesaid compromise it was necessary for the Cherokee council to make an appropriation of \$400,000 to carry out the contract entered into. The council enacted the necessary legislation to appropriate the aforesaid sum, and in due time the bill came to me for my signature, and I signed it in good faith, without noticing that there was a provision in it for the payment of an indefinite sum for attorneys' fees. Had I known that the aforesaid provision carried with it an agreement that one-third of the appropriation, or \$126,000, should go to attorneys, I would not have signed the bill. I expected that there would be some attorneys' fees to be met out of the appropriation, but as the money thus paid came out of the freedmen, and as their trustee, Moses Whitmire, made the contract, I did not consider it my business to inquire into it.

No man ever paid or tendered me any money for my influence or for any action of mine in connection with the aforesaid appropriation. I never knew what Whitmire's contract with Kern was until I saw it published in the Indian Chieftain, a weekly paper published in Vinita, Ind. T., and I did not see that until I arrived in Wash-

ington, D. C. I do not know of any work Kern did to earn such a large sum of money.

S. H. MAYES.

Sworn to and subscribed before me this 28th day of December, 1897.

W. J. McCONNELL,
United States Indian Inspector.

Statement of Albert A. Taylor.

TAHLEQUAH, IND. T.

Albert A. Taylor, being duly sworn, on his oath says:

My age is 27 years; am a Cherokee citizen and live in Tahlequah, Ind. T. I am the auditor of accounts of the Cherokee Nation, having been appointed by the Cherokee council to said place in November, 1897. I had a talk with E. C. Boudinot, now dead, in December, 1895. About that time and just before said E. C. Boudinot went to Washington to see after matters in connection with the freedmen, the said Boudinot told me "that if things went right" he would build a big house in the spring of 1896 and allow me to use part of it as a pool room, which I then very much wanted. Mr. Boudinot was then the attorney of the Cherokee Nation in matters of the freedmen citizenship question, then before the Court of Claims, and, as I understand, went to Washington to effect a compromise with R. H. Kern, then representing the freedmen. The compromise was effected and the sum of \$400,000 was appropriated by the national council, by act approved March 27, 1896, in pursuance of said compromise.

In speaking of the whole matter I am sure that by the expression used by Mr. Boudinot, "if things went right," he meant that if the \$400,000 appropriation was made he would obtain a part of it. Subsequently Frank J. Boudinot, who was E. C. Boudinot's brother and partner in the practice of law, employed me to use my influence with the full-blood members of the council in aiding the passage of the bill making said appropriation of \$400,000. I then owned and conducted a pool room, sold liquors, cider, etc., and the members of the council were often in my place of business. I was to receive for my work an amount estimated at about \$2,000, and this was to come from \$126,666, paid out of the said appropriation to R. H. Kern, ostensibly as an attorney's fee. The promise was made to me by Frank J. Boudinot, acting for himself and brother, the said E. C. Boudinot. I never received anything, however, but did all I could for the bill, as per my contract. Mr. Frank J. Boudinot stated that he thought R. H. Kern and W. W. Hastings had beat us all out of the money.

ALBERT A. TAYLOR.

Sworn to and subscribed before me this December 29, 1897.

W. J. McCONNELL,
Indian Inspector.

Statement of Daniel Gritts.

Daniel Gritts, being duly sworn, on his oath says: I was a senator and member of the Cherokee council in March, 1896, when the council appropriated \$400,000 to equalize the freedmen with the Cherokee citizens as beneficiaries of the Outlet and other funds; that he has learned that there was paid out of said appropriation the sum of \$126,666 to Robert H. Kern as attorney fee for the freedmen, and that he would never have voted for the bill had he known that any such sum would have been paid; that he voted for the bill because he understood by doing so that the nation would get rid of the Wallace roll and would have a new roll of freedmen much less in number to share in the Cherokee funds to the freedmen.

WILLIAM EVBANKS, *Interpreter.*

DANIEL GRITTS.

Sworn to and subscribed before me this December 29, 1897, and I certify that William Evbanks in interpreting the same to swear Daniel Gritts upon swearing as shown in his signature thereto.

W. J. McCONNELL,
United States Indian Inspector.

St. Louis, February 2, 1898.

Hon. SECRETARY OF THE INTERIOR,
Washington, D. C.

DEAR SIR: Pursuant to my promise made you last week when in Washington, I mail you herewith statement of Hon. Wells H. Blodgett and myself in reference to the compromise of the Cherokee freedmen's case. These statements are made only in answer to the charge that I saw publicly in the papers of my own city made by Mr. Adams before the Dawes Commission that this compromise was the result of a conspiracy between the freedmen's attorneys and the Cherokee officials.

I do not wish to delay you, for I appreciate your kind indulgence, but I am trying to get information from the Territory as to the charges and affidavits that have been made against me in that country, and I hope within a short time to be able to send you a statement in answer to any charges and affidavits made in addition to the one above referred to as being made by Mr. Adams.

Thanking you for your kind indulgence, I remain,

Yours, respectfully,

R. H. KERN.

THE WABASH RAILROAD COMPANY,
GENERAL SOLICITOR'S OFFICE,
St. Louis, January 22, 1898.

To the SECRETARY OF THE INTERIOR,
Washington, D. C.

SIR: I was associated with Mr. Robert H. Kern, of this city, in the litigation brought by the freedmen of the Cherokee Nation to ascertain their rights under the treaty of 1866. From the outset the issues in the case were sharply contested. On the part of the Cherokee Nation it was contended broadly that under the treaty of 1866 the freedmen were only given equal political rights with the native Cherokees, and that the freedmen acquired no interest whatever in the common property of the Cherokee Nation. On the other hand it was contended, by Mr. Kern and his associates, representing the freedmen, that under the treaty they (the freedmen) were invested with all the rights of native Cherokees, including the right to share per capita in the common property. The Court of Claims sustained the freedmen and adopted what was known as the "Wallace rolls" as a basis of computation, and thereupon it entered a decree in their favor for something in excess of \$900,000. The decree provided that to each freedman there should be paid the sum of \$256.34, and from the moment of its rendition it seemed unsatisfactory to the representatives of both sides.

It was unsatisfactory to those representing the nation, not only because it was against them on the main proposition, but also because the court had adopted the "Wallace rolls" as its basis in computing the amount of the decree, and the Cherokees contended that said rolls were inaccurate and contained many more names than there were actual freedmen in the nation. The decree was unsatisfactory to the freedmen because it was a conceded fact that each Cherokee had received in cash from the common funds of the nation the sum of \$295.65, while it only awarded to each freedman the sum of \$256.34. Furthermore, when it became known to the freedmen in the nation that the court had adopted the "Wallace rolls," their counsel were deluged with protests from freedmen, who charged that the "Wallace rolls" were inaccurate, and that there were in the nation hundreds, if not thousands, of freedmen whose names had been omitted. In this connection I will say that as the case progressed through the court, the Cherokees were not only represented by their counsel, but they also had in Washington a delegation of their leading citizens watching their interests and conferring with their counsel. I talked with some of those gentlemen myself, and they seemed to regard the litigation as most unfortunate for their people. They said they thought the nation perfectly willing to do right by the freedmen, but that there was a settled conviction in their minds that the "Wallace rolls" were inaccurate, and that there should be a new enrollment.

There was, from time to time, more or less talk on both sides about an appeal to the Supreme Court, the freedmen saying that they had not been allowed as much per capita as the Cherokees had received, and the Cherokees still contending that the court had erred in its construction of the treaty. Both sides, however, seemed dissatisfied with the "Wallace rolls," and in my conversation with the representatives of the nation, I thought they seemed to object more to the "Wallace rolls" than they did to that feature of the decree establishing the equal rights of the freedmen. Hence from the date of the decree there were suggestions from both sides of a desire to have the decree so modified as to admit of a new enrollment, and there were also frequent suggestions of compromise. Matters continued in that condition until the fall of 1895, when Mr. J. E. Campbell, whom I had not before seen, visited St. Louis for the purpose, as he said, of seeing whether some settlement could not

be reached that would be satisfactory to all interests without an appeal to the Supreme Court. In a conference between him, Mr. Kern, and myself, Mr. Campbell said in substance that in his opinion the nation was willing to concede to the freedmen their legal right to participate in the common funds and property, but that the nation was not willing to accept the "Wallace rolls." We (Mr. Kern and myself), on the other hand, informed Mr. Campbell of the claims of the freedmen to the effect that a fair count would swell the number of freedmen by some thousands. He said in substance that when the nation once conceded the rights of the freedmen to participate in the common funds, the nation had no desire to exclude any freedmen who could show themselves entitled. We told Mr. Campbell we did not ask or expect the nation to provide for more freedmen than a fair enumeration would show, and that, as a compromise, we would consent to and would recommend such modifications of the decree as would make it provide in substance as follows:

First. That each freedman should receive from the funds of the nation the same amount of money that had been paid to each Cherokee by blood.

Second. That there should be a new enrollment of the freedmen by commissioners, one of whom should be designated by the nation, one by the trustee for the freedmen, and a third by the judge of the United States court for the western district of Arkansas.

Third. That after paying each ascertained freedman the same amount each native Cherokee had received, whatever remained of the sum recovered in the decree should go back into the treasury of the nation.

Fourth. That in order to provide for a possible increase in the number of freedmen over what was shown by the "Wallace rolls," the nation should, by proper legislation, appropriate such sums as might be required to pay each freedman whose name should appear upon the corrected roll the same amount that had been previously paid to each native Cherokee, it being understood, however, that after each ascertained freedman should receive the sum that had been paid to each native Cherokee, the remainder of such appropriated funds should be returned to the treasury of the nation.

In pursuance of these general propositions, an agreement was, on the — day of —, 1895, formulated by Mr. Kern and myself on the part of the freedmen, and by Mr. Campbell on behalf of the Cherokee Nation, of which agreement a copy is herewith inclosed, marked "A."

Of course, I know nothing about the authority of Mr. Campbell to represent the Cherokee Nation in that transaction. I did not in fact consider that a material matter, as the agreement itself contemplated affirmative legislative action on the part of the nation before it could become binding on the Cherokees, and it also contemplated the approval of the Court of Claims before it should become binding on the trustee of the freedmen. I then thought the plan of settlement outlined in the agreement a fair one, and am still of the same opinion. With the preparation of that paper my connection with the settlement ended. I do not know what changes were subsequently made in the details, but it has always been my understanding that it was carried out in all its substantial features.

I now learn through the newspapers that complaints are being made to your Department, and that the conduct of Mr. Kern is being made the subject of criticism. I have known Mr. Kern throughout his whole professional life. He is a man whose integrity has never been questioned in this community, and being for a long time associated with him in this litigation, I can say that I never discovered in him anything but an earnest determination to protect in every way the interests of the freedmen whom he represented. The Cherokees had their own counsel, who were always fully capable of defending their rights, and I can cheerfully say that in my opinion there are no grounds whatever for charges of bad faith by the representatives of either party.

With assurances of my highest regard, I am,
Yours, very respectfully,

WELLS H. BLODGETT.

THE SECRETARY OF THE INTERIOR,
Washington, D. C.

DEAR SIR: At the conclusion of our interview last week in Washington in reference to my connection with the litigation in the Cherokee freedmen's case, you kindly accorded me the privilege of reducing to writing the statements I made to you. I wish to lay before you the following facts in reference to that matter:

In July, 1891, Judge Henry D. Laughlin, the Hon. J. Milton Turner, and I were employed by Moses Whitmire, trustee of the freedmen, to conduct the litigation authorized by an act of Congress in behalf of the freedmen against the Cherokee Nation and the United States in the Court of Claims at Washington. By the terms of that contract we were to be paid 10 per cent of whatever we might recover, and this

10 per cent was to be figured upon whatever might result to these people from this litigation, either directly or indirectly, all subject to the approval of the Court of Claims. A copy of this contract is hereto attached, marked "Exhibit A." The case of Moses Whitmire, trustee, etc., v. The Cherokee Nation, et al., was brought in the Court of Claims in September, 1891. Because of various delays this case was not reached for trial until about February, 1895. The opinion rendered then by the court gave the freedmen the same right in the common property of the Nation as the Cherokees by blood had. The decree was left open until the number of the freedmen entitled to share under this decree could be ascertained. The freedmen having no money with which the depositions that would be needed to establish the identity of such people as were entitled to share under this decree, their attorneys, after consultation, decided to submit to the court what is known as the "Wallace roll," which, under the direction of your Department, had been taken, showing the number of people of this class in the Cherokee Nation up to March 3, 1883. The attorneys for the Cherokees submitted what was known as the "authenticated roll" of these people, taken by the Cherokees themselves, showing people alive in 1880. The Wallace roll contained about 3,524 names, the authenticated about 2,000. The court adopted the Wallace roll, using the following language, found on page 4, printed opinion in the above case on file in the Court of Claims:

"And it is further ordered, adjudged, and decreed that for the purpose of enrolling and enumerating the freedmen and colored men aforesaid and their descendants, who are entitled to participate in the funds hereinbefore decreed to them, and it further appearing to the court that an enumeration of the aforesaid freedmen, free colored persons, and their descendants, was made and approved under and by virtue of an act of Congress by the Secretary of the Interior Department of the United States, and that said census of the aforesaid freedmen and free colored persons and their descendants was known as the Wallace roll, and that said Wallace roll contained the number of said persons as were in existence on the 4th of March, 1883, and that the number of said persons shown thereby was 3,524, and it appearing to the court that the Cherokee Nation did not participate in the preparation of said Wallace roll, but that ample opportunity was afforded it to do so: It is therefore adjudged and decreed that its refusal to do so is as effective as if it had actually taken part in the preparation of said Wallace roll, and it is concluded thereby. It is adjudged and decreed that said Wallace roll, showing 3,524 of such persons, is approved by this court and taken by it as furnishing the true number of the freedmen, to wit, 3,524, as being the number of freedmen to be entitled, together with the other citizens of the Cherokee Nation, to be taken as a basis in estimating the amount of money to be decreed to be paid to plaintiffs in this action. It is further adjudged and decreed that the whole number of Cherokee citizens as being entitled to share in the distribution of the aforesaid sum of \$7,240,000 shall be taken as 28,243, and for the purpose of the distribution of the aforesaid sum of \$903,365, amount due said freedmen, free colored persons, and their descendants, less the amounts hereinbefore and hereinafter directed to be deducted therefrom, the Secretary of the Interior is directed to cause the Wallace roll aforesaid to be further corrected by adding thereto descendants born since March 3, 1883, and prior to May 3, 1894, striking therefrom the names of those who have died or have ceased to be citizens of the Cherokee Nation between the aforesaid dates, so that when thus amended and changed it shall represent the number of freedmen, free colored persons, and their descendants aforesaid, entitled to participation in the distribution of the fund now awarded to the complainant. To that end the Secretary of the Interior is authorized to appoint a commissioner to proceed to the Cherokee Nation and ascertain and report to the Secretary of the Interior the facts necessary for the correction of the aforesaid Wallace roll, and in the correction of said roll as provided herein, the Cherokee Nation shall have the right to have a representative present to advise concerning the same, and he shall have full cognizance of all corrections made thereto. When a new and corrected roll is thus made and approved by the Secretary of the Interior, he will cause the amount remaining of the funds awarded the complainants under this decree, after deducting the cost to be paid and distributed to the freedmen, free colored persons, and their descendants aforesaid entitled thereto, not to exceed the sum of \$256.31 per capita. Any balance of the amount hereby decreed to said plaintiffs, and not consumed in the per capita payment herein provided for, shall be paid over to the Cherokee Nation, as other moneys provided for in the agreement between said nation and the Secretary of the Interior hereinbefore referred to."

The counsel for both parties to this suit, when these rolls were submitted, filed a stipulation providing that whichever roll the court should adopt, should have added thereto either 2 or 2 per cent per year from the date of its taking to May 3, 1894, in order that the correct number of people to that date should be ascertained without further work. This decree was entered, I think, in May, 1895. Each party filed motions for new trial, I think, in June of that year, the Cherokees contending that the court erred in finding in favor of the freedmen at all, and further in mak-

ing the Wallace roll binding on them; the attorneys for the freedmen contending that the court erred in not giving each freedman the sum of \$295.25 (which it had found that the Cherokees had paid themselves out of the money distributed), that it had not allowed a sufficient sum to pay each of the freedmen as they would finally be ascertained (on account of the eleven years increase to be added to this Wallace roll) the sum of \$256 a piece, that it had not allowed interest on the various claims that would have been due these freedmen at the date the Cherokees paid themselves down to the date of judgment. The court adjourned, without these motions being taken up, until sometime in November of that year. I came through the city of Washington from the east about the 2d of September, 1895, and either then, or shortly thereafter, by letter was advised by Mr. Chase, the attorney for the Cherokees, that the nation was willing to give each freedman \$295.25 a piece in settlement of this litigation, if they would consent to take the number shown by the authenticated roll, which had been rejected by the court. This proposition the attorneys and trustee for the freedmen declined. Having left Washington about the date above stated, I returned to my home in St. Louis, thinking nothing further could be done in this case until the court should convene in November. Sometime in September the attorneys for the freedmen began to receive letters from the nation to the effect that the Cherokees would be willing to compromise this case by paying what they called each "genuine" freedman the sum of \$295 a piece. These suggestions came both from the freedmen and the Cherokees. The freedmen were poor, credit had been extended them by various merchants in the hope that they would recover money in this suit sufficient to meet these credits, and they were being pressed for payment.

Some time in September we were informed through the papers of the Cherokee Nation that at a special council of that nation held in that month \$5,000 had been appropriated to prosecute this litigation to the Supreme Court of the United States; that Mr. E. C. Boudinot had been selected as counsel to go to Washington and employ some additional attorneys for this purpose. We also learned that he had retained Judge Shellabarger, of Washington. The information in reference to the desire of the freedmen and Cherokees to end this litigation continued to come to us, and we advised among ourselves constantly as to the advisability of its compromise on terms most favorable for the freedmen, so we could avoid the possible years of litigation should the case be appealed. We were unwilling to have the Wallace roll set aside and a new census taken unless we could procure such an additional sum as might be needed in the event the number of freedmen and their increase, as provided by the Wallace roll, should each receive at least \$256. After extensive inquiry among the freedmen and also at the Census Bureau in Washington as to the pains with which the Wallace roll had been taken, we felt it was correct, and also that there were freedmen in that country who by some inadvertence had failed to be enrolled who were entitled to be. After some two months spent receiving various reports concerning the willingness of the Cherokees to settle this litigation, some time in October Mr. Harris, then chief of the nation, passed through St. Louis. He stated to me that he felt the best judgment and interests of his country was that this litigation should end; that they were willing to pay each freedman the same as they had paid themselves, but didn't feel that the Wallace roll correctly stated the number of the freedmen, and if that number could be ascertained in some satisfactory way he felt sure the interests of the people of the nation wanted it settled. I answered him that we thought, and so did the counsel of the Government, that any settlement made of this case would have to be done through an act of the national council of the nation, but we had been unable to see how that could be done.

Some time in November, I think, of that year Mr. Campbell, a citizen of the Cherokee Nation, called at my office in St. Louis, and in conjunction with the counsel for the freedmen the possibility of a compromise of this litigation was discussed, he stating that he felt that the best sentiment of the Cherokee Nation was in favor of adjusting these differences by a compromise, that it had become a very bitter and political question in that country. After a full discussion of all the phases of this litigation and an investigation of a lawful way by which it could be done by the counsel of the freedmen, consisting of Judge Laughlin, Colonel Blodgett, Hon. Fred. Lehmann, Mr. Turner, and myself, a proposition (a full copy of which is hereto attached, marked "Exhibit B") was submitted to Mr. Campbell and accepted by him. I will state here that it was agreed between Judge Laughlin, Mr. Campbell, and myself that he should have no portion of the \$56,000 that had been allowed us by the court, and that in consideration of his having carried out the terms of the compromise proposed in this contract by the Cherokees he should have the larger per cent of whatever fee might be recovered in settlement of the case in excess of the \$56,000. This contract was filed when the proposition for settlement of the case was submitted to the Court of Claims, and I assume can be found among the files there now. Mr. Campbell returned to the Cherokee Nation, and I assume proceeded to see the Cherokee people in reference to this matter. The

counsel for the freedmen, believing that the Wallace roll would stand any investigation, and that there were freedmen in that country not on the roll who were entitled to share, and that the increase of the roll from March 3, 1883, to May 1, 1894, would be in the neighborhood of 1,000 people, and that others might be added, so that the number of the freedmen, as finally ascertained on a just basis, would be between 4,000 and 5,000, and that they would not be willing to enter into a compromise unless this judgment should be increased from \$900,000 to \$1,300,000—that in consideration of this being done they felt that the best interests of the freedmen would be subserved, and that if the number should finally be ascertained, upon the terms provided in this contract, to be smaller than they supposed, that there would be enough to pay each freedmen not \$256, but \$295, which the Cherokees were willing to give, and that if any surplus of this \$1,300,000 should be left after paying each freedman not in excess of \$295 it should revert to the Cherokee Nation.

Some time, I think late in November, 1895, I received a letter from Mr. E. C. Boudinot asking me to meet him in Kansas City. I went there at the appointed time and saw Mr. Boudinot at the Midland Hotel. My recollection is that he and myself spent most of the day alone discussing the various phases of compromise of this case. He wanted the proposition above stated to be reduced first to \$1,000,000, then to \$1,100,000, to none of which I would consent, and finally he stated that I might submit this proposition, but he did not think that the council would pass it. I told him I would not submit any other. It has been stated in a public affidavit of either Mr. Boudinot's widow or brother that Jacob Guthrie and Chief Mayes were present at this meeting. I wish to deny this emphatically. I first saw Chief Mayes in Washington late in December of that year, and Mr. Guthrie sometime after that, never having met either of them before. Returning to St. Louis, I, as attorney of record for the trustee in conjunction with his counsel, Blodgett, Lehmann, Laughlin, and Turner, drafted a letter (a copy of which is attached and marked "Exhibit C") to the chief and council of the Cherokee Nation, submitting, as shown thereby, the terms upon which this case would be compromised by the freedmen, the trustee having previously assented to this. This letter was mailed to these parties at Tahlequah, Ind. T. Neither Laughlin, Blodgett, Lehmann, Turner, or myself went to the Indian Territory to be present at the session of the council to see what it would do in reference to the proposition. Some time in December we received a certified copy of a bill which had been passed by the council in accordance with the terms of the agreement we had made and along the lines in the contract we had made with Campbell, copy of which is attached hereto and marked "Exhibit D."

Shortly after that Judge Laughlin, the trustee, Mr. Turner, and myself went to Washington to submit to the court the proposition to compromise this case as stated in this act of the council. This we did in December of that year, and late in January, 1896, the court declined to allow this compromise to be made, holding to the position that it was correct in saying that each freedman should only be allowed \$256 per capita. In the opinion reported in the case of *Journeycake v. Cherokee Nation*, volume 31, Court of Claims, page 143, the court uses the following language: "The Cherokee government can accomplish its avowed purpose of making complainants equal in the amount received with those who were Cherokees by blood. Without the interposition of this court, the money necessary can be appropriated out of this balance of the fund to be paid over by the United States, and to be paid by the Cherokee Nation to its own citizens, the Delawares, Shawnees, and freedmen." After this decision was rendered each side determined that it would go on to the Supreme Court with this case. On a second reading of the decree entered therein, we determined to make one more effort to compromise the case along the lines suggested by the court quoted above. After discussing this matter with the trustee and Mr. Turner, I drafted a proposition, and went to the room of the chief and the Indian delegation at the National Hotel in Washington. I found there not only these parties, but several other persons unknown to me. I then called the attention of the chief and delegation and Mr. Boudinot to the above language of the court, and stated to them that I thought if the council would appropriate this money the full spirit of the compromise embraced in the November act of the council, which the court had rejected, could be carried into effect, and that the attorneys for the freedmen and trustee felt that if the council would appropriate this money as suggested by the court, the same end would be accomplished in settlement of this case, as it would have been had the court entertained the proposition of compromise.

The matter was discussed very fully, the Cherokees always insisting that they could not go beyond the act of November, above referred to. After mature deliberation this proposition was signed and accepted by the Cherokees. We went to the court and stated plainly what we wanted, and that I felt that if the Cherokees would appropriate this money in accordance with the suggestions of the court, and if this same provision that had been in the original proposition of compromise would be granted by the court, that this litigation would end. The court decided that this proposition was reasonable, and accordingly agreed to modify the decree, and

provided that a commission should be appointed to ascertain these people under the direction of the Secretary of the Interior, and the money mentioned in the judgment be paid accordingly. I stated further that prior to the time of the submission of the original proposition of compromise, I had a full conference with Judge Shel-labarger, counsel of the Cherokees, and he indorsed the proposition of settlement; and, as you will see from an examination of the original papers of compromise submitted to the court, his name is attached thereto, and, I think, he spoke for the Cherokees in the court when the proposition was submitted. Previous to the submission of this last proposition of settlement to the Cherokees, as above stated, Mr. Turner and I explained fully to the trustee the terms of the settlement, the advisability of it, and the belief that it was as effective a way of closing the litigation as had been embraced in the compromise agreed to by the act of the council; also that we felt that inasmuch as the original compromise measure provided for the allowance of a fee of 10 per cent on \$1,300,000, subject, of course, always to the approval of the court (as is shown by the copy hereto attached), and that as all the efforts to compromise had come to naught, and as it was uncertain what further could be done along the line of the last proposition towards having it carried into effect, that the attorneys for the freedmen would be willing to undertake to settle this litigation in the way it was done, on the basis of the contract, with which your honor is already familiar; that this contract was accordingly executed by the trustee. At the time that I submitted this proposition to these people, and up to its adoption, not one word was said to any of them in reference to the compensation that the attorneys for the freedmen would receive for settling this case, nor was anything ever said to them in reference to that.

I wish to state that after the original proposition of compromise was agreed upon Messrs. Blodgett and Lehmann withdrew from the case and did not participate in any fees outside of the \$56,000, that had been originally allowed the attorneys under the decree of the court. After the court modified the decree, which I think was in February, I returned to my home in St. Louis and heard no more of the freedmen's case until some time in March I noticed that an extra session of the council had been called in accordance with the terms of the agreement that had been filed in court. I went to Tahlequah, reaching there after the council was in session, and remained there, I think, two or three days only. I had scarcely reached the town before an attack was made upon this compromise through the papers, and I answered this in the Sentinel of date March 21, I think, 1896, fully explaining the terms of the compromise, and expressly disclaiming any intention of being there to corruptly influence any member of the council. The original of this article I hold in my hands now, and a copy of it is attached and marked "Exhibit E." I explained both in this paper, and to several members of the council who called on me at my hotel (among others Mr. Vann and Mr. Faulkner) what this compromise proposition was. I left there after a day or two and before the bill had become a law appropriating this money. I qualified as commissioner to represent the freedmen of the Cherokee Nation on the — day of —, and the commission went to the Territory and commenced its sessions about the first of May, 1896, and sat until August 10 almost continually, when it finished taking testimony. The stenographer finished writing the testimony in this case and had it ready November 20. The commission was convened by the call of the chairman November 25, and sat constantly considering the evidence taken in these cases until December 10, the time the Secretary had instructed us to conclude our work. At these various meetings in St. Louis all the commissioners were present, except Mr. Clifton, who left for Atlanta, Ga., on the night of the 9th of December, under permission of the Secretary of the Interior, granted him because of his being the clerk of the Georgia senate and being required to be in Atlanta the Monday following, with instructions that he could conclude his work as commissioner in Washington. My recollection now is that we had concluded the making of the roll (that determining who should or should not be enrolled) prior to his departure, or if not, that only a few names were added by Mr. Thompson and myself after his departure. I took then, a few days thereafter, the roll as signed by Mr. Thompson and myself, together with the evidence upon which it was based (we having concluded all work on the authenticated people days before Mr. Clifton left), to Washington and met Mr. Clifton there, told him exactly what had been done in his absence and, if any additional names were added, showed him the evidence pro and con in reference to those names, and he signed the roll in Washington as permitted by the Secretary of the Interior.

I wish further to say, in answer to the various charges that have been circulated in the press and otherwise to the effect that the chief, the Indian delegation, or the members of the council, or Mr. Boudinot, were paid by me for having agreed to this proposition of compromise and the passage of these bills, or that any conspiracy had been entered into by myself with any of these parties to procure the settlement of this litigation, are absolutely false. The fees in this case were divided among Messrs. Blodgett, Lehmann, Turner, Laughlin, Campbell, and Kern. I never

authorized, directly or indirectly, one cent of money to be paid to anyone for any services in effecting this compromise of this litigation as above stated, and I have never known of one cent being expended to procure the vote of any member of the council or the chief or Mr. Boudinot's support of this proposition of settlement. Mr. Boudinot was dead before the council convened in March that appropriated the \$400,000. I wish to say that in July, 1896, while I was acting as commissioner, a series of charges were preferred to President Cleveland against me by Chief Mayes, a copy of which is hereto attached; that I voluntarily went to Washington in September of that year and asked the Secretary of the Interior to review these charges with the proof that had been offered by the Cherokees. I having offered none, except the affidavit of the Hon. J. Milton Turner, a copy of which is hereto attached, and a letter of Mr. de Graffonreid, which I assume is on file in Washington. I file herewith copy of the report of the Secretary of the Interior upon these charges.

Thanking you for your courtesy in the matter, I am,

Yours, respectfully,

R. H. KERN.

EXHIBIT A.

Whereas a suit is now pending in the United States Court of Claims at Washington City, wherein a decree was entered on or about the 8th day of May, A. D. 1895, but from which preliminary steps for an appeal to the United States Supreme Court were taken, in which suit Moses Whitmire, trustee of the freedmen of the Cherokee Nation, is complainant, and the Cherokee Nation and the United States are respondents, the object and purpose of which suit was to secure to the freedmen of the Cherokee Nation equal rights with native Cherokee citizens of Cherokee blood in the common property of the Cherokee Nation, and to recover for the freedmen the same amount which was heretofore paid out or distributed per capita to Cherokees or Cherokee blood; and

Whereas, in said suit and in the decree entered therein, the Court of Claims adopted what is known as the "Wallace roll" in ascertaining the number of freedmen entitled to recover in said cause; and

Whereas it is believed by the Cherokee Nation that said "Wallace roll" is inaccurate, and that upon the one hand names appear upon that roll which have no legal right to be there, and, on the other hand, that names have been inadvertently omitted from it which ought to be there; and

Whereas it is claimed to be the desire of said nation to now fully recognize the rights of the freedmen to participate in the common property of the nation, and to be equalized in the per capita disbursements heretofore made to Cherokees or Cherokee blood, from which the freedmen have been excluded; all as found and decreed by the decree of the Court of Claims above recited; and

Whereas, so believing, it is desirable on the part of said Cherokee Nation, as well on the part of the Cherokee citizens of Cherokee blood as well as the freedmen, that there should be some settlement made, by way of compromise, of all the matters involved in said suit, to the end that all further hostility and friction between Cherokee citizens of Cherokee blood and the freedmen be forever extinguished and ended; and

Whereas it is represented to the counsel of said Whitmire, and of said freedmen in said suit, that many prominent citizens of the Cherokee Nation now favor legislation by the common or national council of the Cherokee Nation, favorable to a compromise, honorable to all alike, of all these matters of controversy and dispute, of the tenor herein described;

Now therefore, in view of the premises, and for the purpose of getting these matters into tangible shape, and to secure a beginning of an effort at compromise, it is agreed by and between Mr. J. E. Campbell, who assumes to represent the present sentiment on these subjects of the Cherokee people, on the one part, and by Mr. Robert H. Kern, who claims to speak for and represent the freedmen, on the other, as follows:

On his part, the said J. E. Campbell undertakes to procure the passage, by the common or national council of the Cherokee Nation, of a law by which all the freedmen of the Cherokee Nation shall be fully recognized as citizens thereof, and as such entitled to receive and enjoy their full share of the common property of the nation in the same way and to the same extent as do Cherokees of Cherokee blood; and as soon as their number and identity can be determined, in the manner herein-after provided, that there shall be paid to them, per capita, in the aggregate the same amount already paid out, per capita, by the Cherokee Nation to Cherokee citizens of Cherokee blood; these payments to include not only the freedmen and free colored persons referred to in the ninth article of the treaty between the Cherokee Nation and the United States, approved July 19, 1866, who were alive at the dates of

the respective payments per capita heretofore made by the Cherokee Nation in the years 1886, 1890, and 1894, but their descendants; and to include also all freedmen who are, or were, entitled to participate in such distribution or distributions by virtue of the provisions of said treaty. The law proposed to be secured from or passed by the national council of the Cherokee Nation shall provide among other things that the appeal taken or intended to be taken by or on behalf of the Cherokee Nation from the judgment or decree of the Court of Claims in the case referred to shall be dismissed, and all applications made for or on behalf of the Cherokee Nation for such appeal withdrawn; that the application made on behalf of the Cherokee Nation to that court for a rehearing of the case shall also be withdrawn; all on condition that the decree be modified as hereinafter provided, and that the principal chief of said Cherokee Nation shall by such law be authorized to appoint, by and with the consent of the national council, or with the senate thereof, as may be the custom in such cases, of the nation, some person as the representative of the nation who shall be authorized to enter into all necessary stipulations to be filed in said Court of Claims, or elsewhere, to fully carry into effect the compromise herein contemplated, if authorized by law by the national council of said nation. The modifications of the decree referred to are to be as follows:

First. The "Wallace roll" referred to in the decree is to be rejected as such, and in lieu thereof the authenticated roll of the freedmen, made by the Cherokee Nation in A. D. 1880, is to be adopted, in so far as it goes, and their descendants, without contest.

Second. The commission to be appointed to supplement this authenticated roll, and to make it complete, is to be composed of three persons, one to be appointed by the Cherokee Nation, in such manner as they may determine, one to be appointed by Moses Whitmire, as trustee of the freedmen, and the third to be designated by the judge of the United States district court for the western district of Arkansas. The names of the persons so appointed to serve on this commission shall be reported forthwith, and without delay, to said Court of Claims, and if confirmed by said court the persons so selected shall constitute a commission for the purpose named. The person selected by Whitmire shall be subject to the approval of said Court of Claims, and so also shall be the person selected by the judge of the United States district court for the western district of Arkansas. If the person named by the Cherokee Nation to serve on this commission is for any reason unacceptable to said Court of Claims, the Cherokee Nation shall appoint some other person as such commissioner who will be acceptable. The three persons, when appointed and confirmed by the Court of Claims, shall be authorized by the decree to determine the number and identity of the persons who are entitled to participate in the distribution of the fund recovered by said decree, and they shall perform this work within such time as the Court of Claims may see fit to name. When the complete roll has been made by them, they shall report the same to the Secretary of the Interior for his guidance in the distribution of the funds recovered by said decree; and on the roll as made by this commission they shall enter the names of all the freedmen, and their descendants, who are entitled to participate in the common property of the Cherokee Nation and in the distribution of the moneys recovered by the decree; the balance, if any, of the moneys recovered by the decree to be paid to the Cherokee Nation as therein provided.

Third. It is known that the Cherokee Nation has heretofore distributed or paid per capita to all Cherokee citizens of Cherokee blood in the aggregate by the several disbursements or distributions heretofore made the sum of \$295.65 to each individual. By the decree referred to the amount authorized to be paid to each freedman is not to exceed \$256.34. To equalize the freedman in this respect with Cherokee citizens of Cherokee blood, the law proposed shall appropriate the amount of the difference between these sums, and will provide for the payment to each freedman whose name appears upon the roll as corrected by this commission, subject only to such deductions as should be made by reason of death or birth in the particular case occurring between the dates of the several per capita distributions heretofore made by the Cherokee Nation to Cherokees of Cherokee blood, and subject also to a deduction from these added amounts of — per cent of each payment, which per cent shall be retained by the disbursing officer or agent of the Cherokee Nation and paid over to Mr. —, who shall receive the same in full for all services by him rendered to the Cherokee Nation in this behalf before this commission, as well as in full of all services rendered by him in relation to these matters, so that the Cherokee Nation will be at no further expense and subject to no further charge.

Fourth. It shall also be a feature of said law that the Cherokee Nation consents to the modification of said decree in respect to the compensation already allowed to said Kern for himself and his associates in so far as it applies to that part of the decree taxing a portion of his and their compensation against the Cherokee Nation, in that the amount allowed him and them and so taxed in lieu of the 2 per cent of the amount recovered, he and they shall be allowed 6 per cent; the meaning and

purpose of which is to allow to the attorneys and counsel of the freedmen the full amount allowed by the act of Congress, and agreed on between Whitmire and them before the institution of the suit.

Fifth. These concessions being made by the Cherokee Nation in the manner hereinbefore pointed out, the application for an appeal made for and on behalf of the freedmen, or their trustee, in said case, shall be withdrawn, and the decree modified as hereinbefore provided or contemplated shall then be entered as of the date of the modification and become final, with the right of appeal to the Supreme Court waived by both sides.

It is expressly understood that this contract or stipulation is entered into for and on behalf of Whitmire, complainant in said suit, in the belief that it is for the interest of the people whom he represents, but subject to the approval, when presented, by the United States Court of Claims, and unless approved by that court and carried into effect, it is to be treated as null and void.

Made and entered into at the city of _____ on the _____ day of November, A. D. 1895. In duplicate.

_____.

EXHIBIT D.

AN ACT Relating to a settlement by compromise of the case now pending in the courts of the United States at Washington, D. C., in which Moses Whitmire, trustee of the Cherokee freedmen, is plaintiff and the Cherokee Nation and the United States are defendants.

Whereas under date of November 25th, 1895, Robert H. Kern, attorney of record for Moses Whitmire, trustee of Cherokee freedmen of Cherokee Nation, has transmitted to the national council a proposition for a compromise of the case of Moses Whitmire, trustee of the freedmen of the Cherokee Nation, *vs.* the Cherokee Nation and the United States, now pending in the United States Court of Claims at Washington, D. C.; and

Whereas a judgment has been rendered against the defendants in favor of plaintiffs in said suit, making a certain roll, known as the Wallace roll, containing three thousand five hundred and twenty-four names, the basis of a distribution of the money adjudged due; and

Whereas in the opinion of the Cherokee Nation this said roll contains the names of persons not justly entitled to share in the distribution of said money and not embraced in the terms of the treaty made and ratified between the Cherokee Nation and the United States; and

Whereas it is the opinion of the freedmen of the Cherokee Nation that a more just roll can be made; and

Whereas it is the desire of the said nation to recognize the right of its bona fide citizen freedmen, under the ninth article of the treaty of 1866, in the per capita disbursements heretofore made to the Cherokees of Cherokee blood, from which its freedmen have been excluded; and

Whereas applications for appeal have been filed in the Court of Claims by both plaintiff and defendant the Cherokee Nation in said suit from the decision in said cause to the Supreme Court of the United States; and

Whereas further litigation would involve a long delay in the payment of the money decreed to be paid to the said freedmen and would entail great expense upon the nation; and

Whereas it is the wish of the nation to equalize its freedmen with the Cherokees in the distribution of the aforesaid moneys, and it being the wish of all parties to this suit that all litigation in reference thereto should be concluded in the said Court of Claims; and

Whereas, by stipulation on file in said cause it is agreed between the parties to said suit that all persons whose names appear upon a certain roll, duly authenticated by the Cherokee Nation as having been made by it in 1880 and filed with the Secretary of the Interior of the United States, are admitted by the Cherokee Nation to be citizens thereof, and as there can be no controversy about said persons and their descendants being citizens of the said nation at that time;

Now therefore, for the purpose of ending all litigation in reference to the matter in controversy in said suit and to equalize the Cherokee freedmen with the Cherokees in all disbursements made by the Cherokees to themselves, and in order to correctly ascertain the number of freedmen entitled under the ninth article of the treaty of July 19th, 1866, to share in the distribution of the money found by this decree to be due said freedmen from the Cherokee Nation,

Be it enacted by the national council, That the proposition hereinbefore referred to and hereto attached, signed by Robert H. Kern, attorney of record for Moses Whitmire, trustee of Cherokee freedmen, is hereby for the purpose of compromise accepted

by the Cherokee Nation and is made a part of this act, and full power and authority is hereby given to our attorney, E. C. Boudinot, in said case, appointed under authority of act approved September 24th, 1895, to act on behalf of the Cherokee Nation before the Court of Claims, to compromise the case of Moses Whitmire, trustee of Cherokee freedmen *vs.* the Cherokee Nation and the United States, now before the Court of Claims in Washington, D. C., in accordance with the provisions of this proposition and this act, and by and with the consent of the Court of Claims to arrange with plaintiff and the United States for a modification of the judgment heretofore rendered in said cause, and to carry out the spirit of this act, and to further arrange that said judgment shall be so modified as to strike out the binding force of the Wallace roll and the provision therein that the number of freedmen entitled to share in the distribution of said moneys shall be ascertained by the Secretary of the Interior from the said judgment, and in lieu thereof a provision shall be inserted in said judgment that the number of freedmen entitled to share in the distribution of the money mentioned in said decree shall be ascertained by three commissioners, one to be selected by the Cherokee Nation, one by Moses Whitmire, trustee of the freedmen of the Cherokee Nation, and one by the judge of the district court of the United States for the western district of Arkansas, and that these three commissioners shall be confirmed by the Court of Claims; that they shall be empowered by the court to ascertain the number of freedmen entitled to share in the distribution aforesaid; that a vote of a majority of said commissioners shall establish the identity of the freedmen entitled to share in the distribution of said money, and that in ascertaining the identity of freedmen so entitled either party shall be allowed by said commissioners to be represented by counsel learned in the law; that this commission shall accept the names of the persons which appear upon the aforesaid authenticated roll of 1880, furnished as aforesaid by the Cherokee Nation to the Secretary of the Interior, and their descendants now living in the Cherokee Nation, as conclusive evidence of the right and identity of said persons to share in the distribution of said money; that in ascertaining the number and identity of the freedmen so entitled these commissioners shall ascertain who of said freedmen were alive at the dates of disbursements complained of in the amended petition in said cause by the Cherokees to the exclusion of the freedmen, to wit, in the years 1886, 1891, and 1894; that the said commissioners shall proceed to the Cherokee Nation, and there, after due notice given, hear evidence, pro and con, as to the identity of all other persons than those mentioned in the aforesaid authenticated roll of 1880 and their descendants residing in the Cherokee Nation, in ascertaining the number of said people who are entitled to share in the distribution of the moneys disbursed at the three last above-named dates.

When this commission shall have ascertained, either by unanimous or majority vote of said commissioners, the names and number of said freedmen entitled to share in the distribution of the moneys found in favor of the plaintiff in this decree, they shall report the same to the Secretary of the Interior, specifically stating the names and number of said freedmen entitled to share in the distribution of moneys on each of the respective dates last above named. That the amount of money for which judgment shall be rendered on said cause in favor of plaintiff, and against the Cherokee Nation, shall be the sum of one million three hundred thousand dollars (\$1,300,000) with the provision that any surplus left after distributing said money in accordance with the terms of this decree shall become due and payable at once to the Cherokee Nation, in accordance with the terms provided for in the agreement between the said nation and the Secretary of the Interior referred to in said decree. That the Secretary of the Interior shall proceed to disburse so much of the amount last named, less the expense with which said judgment is encumbered by the terms of this decree, to the persons so reported to him by said commissioners, or a majority of them, and shall make a just distribution of the same among said parties, but shall not pay to any one of said parties in excess of the sum of \$295.35.

The said attorney is authorized to consent that judgment may be entered in favor of plaintiff's attorney of record in said cause, in the sum of ten per cent of the amount found in said judgment in favor of the plaintiff against the Cherokee Nation, and to agree that four per cent thereof shall be charged against the Cherokee Nation, and paid out of the fund held by the Secretary of the Interior by virtue of the agreement between the Cherokee Nation and the Secretary of the Interior referred to in this decree. The said attorney is further empowered and authorized by this act to do anything further that may be necessary to carry out the terms and spirit of this act, and agree that when this judgment shall be modified in accordance with the terms and spirit of this act, no appeal, notice of appeal, or motion for a new trial or rehearing shall be taken by the Cherokee Nation, or any other party to this suit, from the terms of the decree so modified, and the Cherokee Nation shall be bound by any agreement made in accordance with this act.

The attorney is further instructed to consent that the compensation of \$1,500 shall be paid to each commissioner confirmed by the court as aforesaid, and that a

further sum of \$2,000 shall be allowed by said court as expenses of said commissioners in ascertaining the number of freedmen aforesaid, and that said sum shall be charged and paid, one-half by the Cherokee Nation, out of its funds held by the Secretary of the Interior aforesaid, and one-half shall be charged to and paid out of the moneys herein allowed in favor of the plaintiff, and that sum shall be paid upon presentation of proper certificate of expenditure, certified by said commissioners, by the Secretary of the Interior, and that the salaries of said commissioners shall be paid when they shall have completed their work and reported the names and numbers ascertained as aforesaid to the Secretary of the Interior. That said commissioners shall complete their labors within six months from the day of their confirmation as such commissioners by the Court of Claims. That all other provisions of said decree shall remain as they now are.

Be it further enacted, That the principal chief be, and he is hereby authorized to appoint the commissioner herein provided for on part of the Cherokee Nation, whenever it shall become necessary, who shall be a Cherokee by blood, and a citizen. That our attorney, E. C. Boudinot, shall report to the principal chief as soon as the arrangements hereinbefore provided shall have been made and a compromise in accordance with the provisions of this act shall have been allowed and approved by the Court of Claims.

Be it further enacted, That our attorney, E. C. Boudinot, is hereby instructed to represent the Cherokee Nation before the commissioners hereinbefore provided, and to defend the interests of the Cherokee Nation before said commissioners, at no further expenses to the Cherokee Nation than included in the fee already paid him in said case.

Provided, That the principal chief is hereby authorized to pay to the said E. C. Boudinot his necessary expenses while in actual service before said commission, and in attending to the business of the nation in the said case, by warrant, and an appropriation is hereby made for that purpose.

Approved Dec. 7, 1895.

S. H. MAYES,
Principal Chief, N. N.

I, Robert T. Hanks, assistant executive secretary, do hereby certify that the above and foregoing ten-page document is a true and correct copy of the original as appears of record in the executive department of the Cherokee Nation.

Given from under my hand and the seal of the Cherokee Nation on this the 11th day of December, 1895.

[SEAL OF CHEROKEE NATION.]

ROBERT T. HANKS,
Asst. Exec. Secy.

EXHIBIT C.

ST. LOUIS, MO., November 25, 1895.

To the Honorable S. H. Mayes, Principal Chief, and the honorable the National Council of the Cherokee Nation:

Soon after the rendition of the decree by the United States Court of Claims at Washington, D. C., in the case of Moses Whitmire, trustee of the Cherokee freedmen, against the Cherokee Nation, it has in various ways come to myself and associates, until now we are inclined to believe, that there is a prevailing sentiment in the nation and a desire of the better-thinking element of the Cherokee people to compromise and settle the matters of dispute involved in that case. It has been represented to us that the Cherokee Nation as a people, now that the right of the freedmen of the Cherokee Nation to participate in the common property of the nation has been established by the decree of the court, are disposed to accept the situation and recognize fully the rights of the freedmen as Cherokee citizens, but that on the other hand there is a widespread, if not controlling, prejudice against what is known as the "Wallace roll." We also know that these questions entered into and formed some of the political issues of the late election held in the nation for members of the national council and also for the office of principal chief.

We also know that these questions have been productive of serious friction between classes of citizens of the nation; the Cherokees of Cherokee blood on the one hand and the freedmen on the other. For your information, we beg to say that many intelligent and disinterested citizens of the nation have from time to time discussed with us these matters, as well as the theories and propositions of compromise of these matters of dispute. All these things have led myself and associates, who as counsel represent the freedmen in the case referred to to believe that terms honorable and fair to all for a compromise and settlement of all those matters of dispute ought to be reached and probably can be. On the one hand it is conceded,

as we understand the condition of the sentiment in the nation, that if the freedmen are entitled to recover at all, they are entitled to receive, not the sum of \$256.34 per capita, or rather "not to exceed" that sum, but a sum equal to the aggregate amount heretofore disbursed to each Cherokee citizen of Cherokee blood, namely, the sum of \$295.35, modified, of course, in particular instances by the dates of birth and death occurring between the dates of the several payments heretofore made with Cherokees of Cherokee blood.

It has been asserted and claimed that names appear on the Wallace roll to a limited number which have no right to be there, but it is also conceded that there are freedmen in the nation whose names should be upon that roll, who are entitled to participate in the distribution whose names are not there. In these circumstances we understand that it is the desire of the nation to have a new, correct, and complete roll of the freedmen made, for the purpose of determining in a full and final way the names and identity of the persons who, as freedmen and free colored persons and their descendants, are entitled by virtue of the decree referred to under the ninth article of the treaty of July 19, 1866, to participate in the distribution of the funds now being held by the United States for the purposes of this suit, and that if this revised roll can be secured it is also their desire to have the freedmen whose names may appear upon this corrected or revised roll fully equalized with the Cherokees of Cherokee blood, and it is believed that if this can be accomplished the sources or causes of friction, hostility, and animosity now existing between these classes of citizens of the nation can be wholly and effectually blotted out, and that this can be more effectually done by a compromise of these matters than by further litigation of them.

The representatives of the freedmen have fully canvassed these matters, and in view of the assurances referred to, that it is the desire of the Cherokee people now to treat the freedmen as Cherokee citizens, fully entitled to all the rights of Cherokee citizens, and believing it to the interest of the freedmen as much as to the other Cherokee people to adjust in a friendly way the matters of dispute and controversy between them, we have decided to submit for your consideration, and with a view to a compromise of all these matters of dispute, the following proposition, all of which, however, is subject, of course, to the approval of the Court of Claims at Washington, and conditioned upon the enactment by you of such legislation as may be necessary to carry it into effect, namely:

The application of both sides for an appeal to the Supreme Court from the decision of the Court of Claims to be withdrawn; the decree now entered in the case to be so modified that the aggregate of the recovery shall be made \$1,300,000; the sum to be paid to each freedman to be \$295.35; in lieu of the Wallace roll the authenticated roll of the freedmen made by the Cherokee Nation as lodged with the Secretary of the Interior, known as the authenticated roll of 1880, to be accepted and treated as final. In so far as the names upon that roll appear, as to those persons and their descendants, for the purposes of a new, corrected, and complete roll of freedmen, a commission of three to be appointed, one selected by the Cherokee Nation in such manner as it may provide, another by the trustee of the Cherokee freedmen, and a third by the judge of the United States district court for the western district of Arkansas, the persons so selected to be approved by the Court of Claims, and this commission to be organized and authorized in such manner as the Court of Claims may see fit to proceed to an ascertainment of the names, number, and identity of the freedmen and free colored persons entitled to participate in the distribution, and when made by this commission, or a majority of it, to be certified in the manner to be prescribed by the Secretary of the Interior for the purposes of disbursements.

Before this commission the Cherokee Nation as such shall be entitled to a representative by counsel, and so also shall be the freedmen, and the roll as made, completed, and corrected by this commission to be treated as the official roll upon which the disbursements are to be made. The compensation of the counsel of the trustee for the freedmen to be not in excess of the amount measured by his contract with them, but this to apply to the whole amount of the recovery, and of the sum so taxed, the amount to be taxed against the Cherokee Nation not to be in excess of 4 per cent. The balance of the fund recovered in the case, after the disbursement to the freedmen whose names shall appear upon the roll as corrected, revised, and completed by this commission, the payment of all costs incurred in the case, including the compensation paid for counsel fees, to be paid over to the Cherokee Nation as soon as the disbursements to the freedmen per capita have been made.

If a compromise of these matters in dispute can be arranged on these lines, and the Cherokee Nation will by proper enactment authorize it to be done, and will appoint such person or persons to act for it, and to sign the necessary stipulations to carry it into effect, myself and associates will present the matter to the Court of Claims at Washington, and recommend in behalf of the freedmen that the decree be so modified as to meet this proposition, and will do whatever may be necessary, with the approval of the court, to carry it into effect.

Trusting these matters will receive your early consideration, and that a compromise which will effectually and forever wipe out the political friction now existing in the nation flowing from the matters in dispute referred to, and believing it to the interest of our clients to secure, by an amicable arrangement rather than by force, their rights in the premises, I have the honor to respectfully submit the foregoing proposition.

ROBT. H. KERN,
Attorney of Record for Moses Whitmire, Trustee of Cherokee Freedmen.

I, Robert T. Hanks, assistant executive secretary, do hereby certify that the foregoing ten-page document is a true and correct copy of the original as appears of record in the executive department of the Cherokee Nation.

Given from under my hand and the seal of the Cherokee Nation on this December 11th, 1895.

[Seal of Cherokee Nation.]

ROBERT T. HANKS,
Asst. Exec. Secy.

EXECUTIVE DEPARTMENT, CHEROKEE NATION,
Tahlequah, Ind. T., July 18, 1896.

His Excellency GROVER CLEVELAND,
President of the United States:

I wish to enter a complaint against Mr. R. H. Kern, one of the commissioners selected to determine the claims of freedmen to the rights of native Cherokees under the ninth article of the Cherokee treaty of 1866. From the affidavits herewith it will be discovered that the said Kern has been corrupting the duties of his position by employing an attorney, one R. P. de Graffenreid, to assist J. Milton Turner, attorney for the freedmen, before the commission, in the prosecution of freedmen claims; that he has been intimidating witnesses who appear on part of the nation by threatening them with prosecution and imprisonment, and that he, with the said J. Milton Turner, has been preparing cases for the freedmen before presentation to the commission.

As a well-established instance of Mr. Kern's corruption, I would respectfully invite your attention to the affidavit of Col. D. M. Wisdom, United States Indian agent for the Five Nations of the Territory.

These affidavits, with many rumors of the wrong and arbitrary practices of Mr. Kern, I deem sufficient to call your attention thereto, and request that you cause an investigation of his official conduct as a commissioner of the freedmen, with the ultimate view of dismissing him from the commission should these charges be sustained.

As consequences of these unauthorized practices hundreds of freedmen will be imposed upon the nation having all the rights of native Cherokees.

Hoping that you will graciously entertain this complaint and protect us from such enormous imposition, I have the honor to be,

Your obedient servant,

S. H. MAYES, *Principal Chief.*

[In re R. H. Kern, commissioner, charging corrupt practices.]

DEPARTMENT OF THE INTERIOR,
Washington, September 29, 1896.

After an examination of the evidence in the above-stated matter, and on the recommendation of the Assistant Attorney-General of the Interior Department, it is ordered that the charges preferred by S. H. Mayes, principal chief Cherokee Nation, against R. H. Kern, one of the commissioners to determine the claims of freedmen to the rights of native Cherokees, be, and the same is hereby, dismissed as unproven; and that a copy of this order be furnished to said chief and also to Mr. R. H. Kern.

DAVID R. FRANCIS, *Secretary.*

J. Milton Turner, being duly sworn, makes oath and says that he is the attorney for the freedmen before the commission in the case of Whitmire, trustee, against the Cherokee Nation; that early in May, when the commission was sitting at Hayden and Fort Gibson, Ind. T., he became sick from overwork, and stated to Mr. Kern that he would like to have some one assist him, and wanted to know if it would be satisfactory to Mr. Kern, who represented the freedmen on the commission, if he

would employ Mr. de Graffonreid; Mr. Kern told him that he thought Mr. de Graffonreid could help him out, had no objection to his employing Mr. de Graffonreid for any time, even during the whole work before the commission if he wished to; that accordingly he engaged Mr. de Graffonreid and requested Mr. Kern to state to Mr. de Graffonreid that it would be satisfactory for him to manage the cases whilst he was sick, before the commission; that he was sick several days at these two points, and Mr. de Graffonreid assisted him in accordance with the terms of this agreement; that at the expiration of the services, he, the affiant, did not have money with him with which to pay Mr. de Graffonreid, and requested Mr. Kern to advance the same and he would give him his check on a St. Louis bank for the amount so advanced; that Mr. Kern did pay Mr. de Graffonreid for these services at affiant's request, and that he gave Mr. Kern a check on the bank at St. Louis for the amount so paid, which check was cashed by Mr. Kern at St. Louis, and which check he now holds for inspection. Mr. Kern has no interest in any fees the affiant may collect for his services in behalf of the freedmen before the commission.

Subscribed and sworn to before me this — day of —, 1896.

Acts of the Cherokee council to equalize payments from Cherokee Outlet funds.

AN ACT to appropriate and pay certain moneys out of moneys arising from the sale of the Cherokee Outlet to the freedmen of the Cherokee Nation.

Whereas by virtue of an agreement made and entered into between the Cherokee Nation and the Secretary of the Interior of the United States on or about the 17th day of May, 1893, the sum of \$1,660,000, with accrued interest, was allowed to remain in the Treasury of the United States, the same being a portion of the money due the Cherokee Nation from the United States on account of the purchase of the Cherokee Outlet, to answer any claim that might be established in the Court of Claims of the United States in favor of the Delawares, Shawnees, and freedmen in suits then pending in said court in their behalf against the Cherokee Nation, which sum on March 4, 1895, amounted to \$1,792,800; and

Whereas the said Court of Claims in the said suits decided that each of said parties was entitled to recover of the Cherokee Nation \$256.64, and in the case of Moses Whitmire, trustee for said freedmen, against the Cherokee Nation et al., did decree on May 8, 1895, that he was entitled to recover of the Cherokee Nation the sum of \$903,365, and that what is known as the Wallace roll was binding on the Cherokee Nation; and

Whereas the Cherokee Nation, in the distribution of the several sums complained of in said suits, had paid each Cherokee the sum of \$295.35 each; and

Whereas the Cherokee national council did on December 7, 1895, enact a law agreeing that the nation, in consideration of said Moses Whitmire, as trustee of said freedmen, agreeing that in said cause the decree entered of date May 8, 1895, should be so modified as to strike therefrom the provision making the Wallace roll binding on the Cherokee Nation and agreeing that the number of freedmen entitled to share in the last-named sum would consent to increase the judgment so entered from the sum of \$903,365 to the sum of \$1,300,000, and did appoint E. C. Boudinot to carry out the provisions of said act; and

Whereas said E. C. Boudinot and R. H. Kern, attorney for Whitmire, did petition said court to modify said decree; and

Whereas said court refused to so modify said decree and held the Wallace roll binding on the nation, and declared that increase of \$400,000 to equalize the freedmen with the Cherokees in the payments made to the Cherokees was properly the duty of the Cherokee national council; and

Whereas all parties to this litigation were desirous that it should end; and

Whereas the Cherokee Nation was willing that each freedman should be paid the same sum as each Cherokee had been paid, to wit, the sum of \$295.35, and that the spirit of the said act of the national council should be carried into effect, it was agreed between Samuel H. Mayes, principal chief; C. J. Harris, G. W. Bengé, Roach Young, and Joseph Smallwood, the Cherokee delegation, and E. C. Boudinot, all acting for the Cherokee Nation, and Moses Whitmire, trustee, and R. H. Kern, his attorney, acting for the freedmen, that if the said principal chief would call a special session of the Cherokee national council, and recommend that it appropriate the sum of \$400,000 to equalize said freedmen with the Cherokees, that said Whitmire and Kern would recommend to the Court of Claims that the decree be so modified as to strike from it the binding force of the Wallace roll on the nation and allow that the number of freedmen entitled to share under said decree should be ascertained by a commission of three persons.

The agreement between E. C. Boudinot and R. H. Kern above stated reads as follows:

"This agreement, made and entered into this 28th day of January, A. D. 1896, by and between E. C. Boudinot, acting as the duly authorized attorney of the Cherokee Nation, for the purpose of settling the suit of Moses Whitmire, trustee, that the freedmen of the Cherokee Nation, v. the Cherokee Nation and the United States, in the Court of Claims at Washington, D. C., and Robert H. Kern, acting as attorney for said Whitmire, witnesseth:

"That the said Robert H. Kern hereby agrees with said Boudinot to obtain the consent of said trustee and said Court of Claims that the provision in the decree therein making the Wallace roll binding on the Cherokee Nation shall be stricken therefrom, and in lieu thereof a provision inserted providing that the identity of the number of freedmen mentioned in said decree shall be ascertained by a commission approved by said court, and that the said Boudinot agrees with said Kern, in consideration of having this done, to have the principal chief of the Cherokee Nation call together the national council thereof in special session, and within a reasonable time, and to have said national council so convened appropriate such sums of money as may be needed in excess of the amount decreed to be due the freedmen in the above cause as may be necessary to equalize the said freedmen in the amount the Cherokees have paid themselves each in the three payments complained of in the said suit, but not in excess of \$400,000; it being understood that if the said calling of the council and appropriation by it of said sum shall fail, then the provision striking from said decree the Wallace roll shall be set aside, and the decree shall remain in force as it now is.

"In testimony hereof we have hereunto set our hands, day and date first hereinbefore written.

"R. H. KERN,
"Attorney for freedmen.

"E. C. BOUDINOT,
"Attorney for Cherokee Nation."

And the agreement between said Mayes and the Cherokee delegation and R. H. Kern, reading as follows:

"This agreement, made and entered into this 28th day of January, A. D. 1896, by and between Samuel Mayes, principal chief of the Cherokee Nation, acting in and for its behalf, and Robert H. Kern, attorney for Moses Whitmire, trustee of the freedmen of the Cherokee Nation, acting for and in his and their behalf, witnesseth:

"That whereas the Court of Claims of the United States has refused to approve and enforce the compromise of the suit pending therein, wherein Moses Whitmire, trustee of the freedmen of the Cherokee Nation, is plaintiff and the Cherokee Nation and the United States are defendants. Now for the purpose of ending said litigation and securing the object of said proposed compromise as provided for in an act of the national council approved December 7, 1895, the parties to this agreement stipulate as follows: That said Samuel Mayes, as said principal chief, agrees that within a reasonable time to call together the national council of the Cherokee Nation in an extra session and to recommend it to appropriate such sums of money as shall be needed to equalize the freedmen with the Cherokees in the payment of the three funds that are mentioned in the pleadings and the decree in the case above mentioned. That is to say, such sum in excess of the judgment for \$903,254 now standing in said decree in favor of complainants therein, viz., an additional sum of \$100,000 as provided in an act of December 7, 1895, with the reservation that all surplus is to be returned to the Cherokee Nation. And the said Robert H. Kern agrees to obtain the consent of said Whitmire and the Court of Claims to the striking from said decree of the provision therein making the Wallace roll binding upon the Cherokee Nation, and to substitute in lieu thereof a provision that the number of the freedmen mentioned in said decree shall be determined by a commission approved by said court.

"In witness whereof the parties hereunto set their hands the day and date first hereinbefore written.

"S. H. MAYES.
"ROBERT H. KERN.
"MOSES (his x mark) WHITMIRE.

"Witnesses to Moses Whitmire's signature:

"J. MILTON TURNER.
"MARIA L. RICHARDSON.

"We, the undersigned, duly accredited delegates from the Cherokee Nation, hereby approve of the above agreement.

"C. J. HARRIS.
"ROACH YOUNG.
"JOSEPH SMALLWOOD.
"G. W. BENGE.

"I, the undersigned, Moses Whitmire, acting as trustee as above stated, approve of the above agreement.

"MOSES (his x mark) WHITMIRE, *Trustee*.

Witnesses:

"J. MILTON TURNER.

"MARIA L. RICHARDSON."

That in pursuance of said agreement, and to carry the same into effect, the said Court of Claims did, at the request of said Boudinot and Kern, on February 3, 1896, so modify said decree as to strike therefrom all provision making the Wallace roll binding on the Cherokee Nation, and did decree that the number of freedmen entitled to share in said sum of \$903,365 should be ascertained by a commission of three persons, one to be appointed by the principal chief of the Cherokee Nation, one by said Whitmire, and one by the Secretary of the Interior, and that the Secretary of the Interior should pay said money to said freedmen as they appeared on the roll made by these commissioners and approved by the Secretary of the Interior; but that (to) no one of said freedmen should a sum in excess of \$256.34 be paid; and

Whereas there still remains in the Treasury of the United States in excess of the judgment rendered in the Delaware, Shawnee, and freedmen cases, of said sum first mentioned, the sum of \$491,155.06;

Now, therefore, for the purpose of carrying out the aforesaid agreement between the said Mayes, Cherokee delegation, and the said Boudinot, and the said Whitmire and Kern, and for the purpose of equalizing the freedmen with the Cherokees in the payments to each of them of the same amount as has been paid each Cherokee:

Be it enacted by the national council, That there be, and is hereby, appropriated out of the above fund, to be paid said freedmen, the sum of \$400,000, or so much thereof as shall be necessary to carry this act into effect, which is hereby directed to be paid said freedmen by the treasurer of the Cherokee Nation as their names shall appear upon the roll approved by the Secretary of the Interior as provided in said decree of February 3, 1896, after payment of said money mentioned in said decree shall have been made to them by the Secretary of the Interior; but in no event shall said treasurer of the Cherokee Nation pay out of said \$400,000 more than in addition to the sum of \$903,365 the amount of the judgment in the case of Moses Whitmire, trustee of the freedmen of the Cherokee Nation, *v. Cherokee Nation et al.*, in Court of Claims, than will pay each freedman the sum of \$295.35. From said sum of \$400,000 there shall be deducted the amount said Whitmire, as trustee, has contracted to pay his attorney of record in said cause, which shall be paid said attorney by said treasurer out of said fund as soon as the same is available and charged against moneys to be paid to the freedmen. The expense of making said payment by said treasurer shall also be deducted from said fund of \$400,000 and likewise charged against said freedmen.

Sec. 2. That the treasurer of the Cherokee Nation is hereby authorized, empowered, and directed to request the Secretary of the Interior and the Secretary of the Treasury of the United States to transfer the remainder of the first installment, with accrued interest, of the proceeds of the "Cherokee Outlet," set aside by the act of Congress of March 3, 1893, to satisfy the claims of the Delawares, Shawnees, and freedmen, after deducting the amount of the judgments obtained in their behalf, to the assistant treasurer of the United States at St. Louis, Mo., to the credit of the Cherokee Nation.

Passed the Senate March 24, 1896.

SAMUEL SMITH,
President of Senate.

RICHARD M. WOLFE,
Clerk of Senate.

Concurred in by the council branch of the national council March 26, 1896.

JOHNSON SIMMONS,
Speaker of the Council.

R. W. KING,
Assistant Clerk of Council.

Approved March 27, 1896.

S. H. MAYES,
Principal Chief.